The Commonwealth of Massachusetts.

INDUSTRIAL ACCIDENT BOARD.

VOLUME IV.

REPORTS OF CASES

UNDER THE

WORKMEN'S COMPENSATION ACT,

DETERMINED BY

COMMITTEES OF ARBITRATION, THE INDUSTRIAL ACCIDENT BOARD AND THE SUPREME JUDICIAL COURT.

JANUARY 1, 1915, TO JUNE 30, 1915, INCLUSIVE.

BOSTON:
WRIGHT & POTTER PRINTING CO., STATE PRINTERS,
32 DERNE STREET.
1917.

PUBLICATION OF THIS DOCUMENT
APPROVED BY THE
SUPERVISOR OF ADMINISTRATION.

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INTRODUCTION.

Within the pages which comprise this, the fourth volume of the published cases of the Industrial Accident Board, will be found many important decisions by the Supreme Judicial Court on appeal from findings of the Board, decisions of the Industrial Accident Board on review, and findings and decisions of committees of arbitration. Only cases which involve decisions bearing upon basic questions have been printed herein, the policy being to eliminate non-important cases from the published reports of the Board.

Employee's Death by Reason of Unexplained and Unnecessary Presence upon Railroad Track does not arise out of Employment. — The Industrial Accident Board found, in Savage's case, that the employee's death occurred by reason of his unexplained absence from the railroad car which he was engaged in unloading, and that his presence on the railroad track was unnecessary under the circumstances; and the court held that "there was evidence to support this finding." The court said: —

> The employee was at work in a car on a spur track, eight feet away from the main line of the Boston & Albany Railroad. This spur track was about four inches below the main line. For some unexplained reason he left the car and went upon one of the main tracks of the railroad, where he was struck by an engine and killed. There was no evidence showing it to be any part of his employment to cross the main track; nor was there any evidence tending to show why he was there. The plaintiff is not entitled to recover under this statute unless the injury arose out of and in the course of her husband's employment; and to establish these facts the burden of proof rests upon her. It is not enough to "show a state of facts which is equally consistent with no right of compensation as it is with such right. There being no evidence to show that the fatality was caused by her husband's employment, or that it occurred while he was engaged therein, she cannot recover." (Sponatski's Case, 220 Mass. 527, 528; King's Case, 220 Mass. 290; Fumiciello's Case, 219 Mass. 488.)

Employee's Previous Condition of Health of no Consequence in determining Amount of Relief afforded. — In Madden's case, the record shows that the employee was engaged at her work in the carpet mills repairing bad spots in the weaving of rolls of carpet, when her weakened heart condition became accelerated and aggravated by the strain of pulling or dragging the carpet over the table, and she became incapacitated for work. Compensation was awarded on the ground that the acceleration of a previously diseased condition to the point of incapacity for work was a personal injury which arose out of and in the course of the employment. After stating briefly the material evidence as to the work, and the resulting effect of such work upon the pre-existing heart condition, the court said: —

> Rational minded persons endeavoring to get at the truth might have found upon this evidence, with the deductions reasonably to be drawn from it, that the employee, being under some degree of disability due to a weak heart, suffered by reason of exertion in pulling the carpet, as required by her contract of service, further acute impairment of the strength of the heart, whereby it was disabled from performing its normal functions as it had done theretofore. This was a damage to a physical organ. It was definite and specific detriment to the physiological structure of her body.

The Difference between "Personal Injury" and "Personal Injury by Accident" stated by the Court. — The court said, in Madden's case: —

> The standard established . . . by our Workmen's Compensation Act as the ground for compensation is simply the receiving of "personal injury arising out of and in the course of" the employment. This standard is materially different from that of the English act and of the acts of some of the States of this nation, which is "personal injury by accident," both in the act of 1897 and 1906. (See 60 and 61 Vict. 1897, c. 37, § 1 (1); 6 Edward VII., 1906, c. 58, § 1 (1).)
>
> The difference between the phraseology of our act and the English act in this respect cannot be regarded as immaterial or casual. The English act in its present form was passed several years before ours. It was known to the Legislature which enacted our statute, and was followed as to its general frame and in many important particulars. (Gould's Case, 215 Mass. 480, 486; McNicol's Case, 215 Mass. 497, 499.) Indeed, "the language of the English act of 1897 was followed whenever possible." (See Report of Commission on Compensation, 1912, p. 46.) This differ-

ence must be treated as the result of the deliberate design of the General Court after intelligent comprehension of the limitation expressed by the words of the English act. The freer and more comprehensive words in our act must be given their natural construction, with whatever added force may come from the intentional contrast in phraseology with the English act.

Illustrating the Difference between the Two Phrases. — The court then goes on to cite an illustration of the difference between "personal injury" and "personal injury by accident" by referring to the language used by Lord Reading, Chief Justice of England, in the case of Trim Joint District School Board of Management *v.* Kelly, 1914, A. C. 667, 679: —

For example, if a workman became blind in consequence of an explosion at the factory, that would constitute an injury by accident; but if in consequence of the nature of his employment his sight was gradually impaired and eventually he became blind, that would be an injury, but not an injury by accident.

Actions for Personal Injury arising from Disease without Physical Impact are not Uncommon. — The court goes on to say further in the course of its opinion in Madden's case: —

Actions for personal injury arising from disease contracted in the course of employment and without physical impact are not uncommon where the other elements exist to establish liability. (Thompson *v.* United Laboratories, 221 Mass. 276; Cox *v.* Jayne Chemical Co., 147 Pa. St. 475; Fox *v.* Peninsular White Lead & Color Works, 84 Mich. 676, 682.) That they have not been more frequent perhaps has been due to the fact that such dangers usually are well known and are assumed by the contract of employment, or are not matters about which a duty has been owed by the employer.

There is no Explicit Provision for Compensation for Occupational Disease as Such. — Referring to the question as to whether occupational disease, as such, is covered, the court says, in Madden's case: —

Varying facts may give rise to questions of difficulty. In this connection it is to be noted that there is no explicit provision for compensation for occupational diseases as such. "Personal injury" is the only ground for compensation. The legislative principle declared by the Workmen's Compensation Act, to the test of which all cases arising under it must be

subjected, is that whatever rightly is describable as a "personal injury," if received "in the course of and arising out of" the employment, becomes the basis of being a claim.

Act makes no Distinction between Healthy or Diseased Employees. — Referring to insurer's argument that, since the harm to the employee was not wholly the effect of the work, but came in large part from the previous weakened condition of the employee's heart, either there should be no compensation awarded, or the award should be restricted to that part of the injury which resulted directly from the work, the court said: —

The act makes no provision for any such analysis or apportionment. It protects the "employee." That word is defined in Part V, section 2, as including "every person in the service of another under any contract of hire," with exceptions not here pertinent. There is nothing said about the production being confined to the healthy employee. The previous condition of health is of no consequence in determining the amount of relief to be afforded. It has no more to do with it than his lack of ordinary care or the employer's freedom from simple negligence. It is a most material circumstance to be considered and weighed in ascertaining whether the injury resulted from the work or from disease. It is the injury arising out of the employment, and not out of disease of the employee, for which compensation is to be made. Yet it is the hazard of the employment acting upon the particular employee in his condition of health, and not what that hazard would be if acting upon the healthy employee or upon the average employee. The act makes no distinction between wise or foolish, skilled or inexperienced, healthy or diseased employees. All who rightly are describable as employees come within the act.

The Act is not a Substitute for Disability or Old-Age Pensions. — After stating that the act is not a substitute for disability or old-age pensions, and declaring that it cannot be strained to include that kind of relief, the court goes on to say: —

A disease which under any rational work is likely to progress so as finally to disable the employee does not become a "personal injury" under the act merely because it reaches the point of disablement while work for a subscriber is being pursued. It is only when there is a direct causal connection between the exertion of the employment and the injury that an award of compensation can be made. The substantial question is whether the diseased condition was the cause or whether the employment was a proximate contributing cause. In the former case no award can be made; in the latter, it ought to be made.

Reviewing Brightman's Case by Request, Court states that it expresses its Deliberate and Matured Judgment. — The court was asked by counsel for insurer in the course of his argument on appeal in Madden's case to review Brightman's case, and especially the sentence where it is said: "Acceleration of a previously existing heart disease to a mortal end sooner than otherwise it would have come is an injury within the meaning of the Workmen's Compensation Act." The court says on this point: —

Of course that sentence was applied in its context to an acceleration directly traceable to the employment as the cause. It expressed the deliberate and matured judgment of the court. There is not thereby imported into the Workmen's Compensation Act any theory of the law founded upon wrongdoing of the employer. It is plain, and has been said repeatedly, that the act eliminates all consideration of tort, penalty or negligence, save where there has been "serious and willful misconduct." (See Murphy's case, *ante.*) It establishes a unique theory of distribution of the human loss directly arising out of commercial and industrial enterprise hitherto unknown to our law. When a pre-existing heart disease of the employee is accelerated to the point of disablement by the exertion and strain of the employment, not due to the character of the disease acting alone or progressing as it would in any rational work, there may be found to have been a personal injury.

Economic Consequences of Madden's Decision referred to. — The court, referring to counsel for insurer's argument that grave economic consequences of far-reaching effect may follow from the act as construed in Madden's case, and to the statement that persons not in good health may be altogether excluded from employment, says: —

These considerations are of great public moment. But these factors relate to legislative questions, and the arguments founded on them are distinctly legislative arguments. They may be entitled to attention and deliberation at the hands of the legislative department of government. In the present forum they cannot have decisive significance, even if it were plain that the enumerated consequences were inevitable. The function of the judicial department of the government is simply to determine whether an act is within the power vested by the Constitution in the Legislature, and then to enforce it according to its true meaning in cases as they arise. While the consequences to which a particular construction or application of a statute would lead have an important bearing in determining what may have been the intent of the Legislature in using words

of doubtful import (Greene *v.* Greene, 2 Gray, 361, 364), they cannot control a plain rule of positive law established by clear language in a legislative mandate.

Constitutionality of Act assailed. — Counsel for insurer in Madden's case assailed the constitutionality of the Workmen's Compensation Act, as interpreted by the Board, and urged that the employer is compelled to part with property for causes for which he is in no wise responsible; and that thus he is deprived of property without due process of law. Referring to this claim the court states: —

In its essence that is an attack upon the act as a whole, for in none of its ordinary aspects does the payment required by the act depend upon fault, and may be required in many cases where the employer was wholly free from fault. In support of this attack, cases like Camp *v.* Rogers, 44 Conn. 291; Dougherty *v.* Thomas, 174 Mich. 371; Ohio & Mississippi Railway *v.* Lackey, 78 Ill. 55; Commonwealth *v.* Herr, 229 Pa. St. 132, and Eastman *v.* Jennings-McRea Log Co., 69 Ore. 1, are relied upon where statutes have been stricken down which have undertaken to make one liable in an action at law for injuries, losses or expenses for which he was in no way responsible, directly or remotely, morally or legally. The case at bar is quite distinguishable. The Workmen's Compensation Act is elective and not compulsory. It is wholly optional with the employer, as it is with the employee, whether he comes under the provisions of the act or stays outside and stands on his legal rights. The connection between the employment and the injury in the case at bar is the same in kind as in the manifold other instances where the personal injury to the employee is caused by a definite physical blow wholly without fault of the employer. The act is not unconstitutional in this respect. (Opinion of Justices, 209 Mass. 607; Young *v.* Duncan, 218 Mass. 346, 351.)

Shooting of Watchman by Officers seeking Burglars due to Unfortunate Misapprehension and does not arise out of Employment. — A burglary had been committed in the town of Bourne, and while officers of the law were endeavoring to apprehend them, and by reason of an unfortunate misapprehension, these officers shot and killed the decedent, a night watchman in the employ of the subscribers. There was no evidence that the subscribers' property ever had been injured by wrongdoers, or that from its character or location it was especially exposed to theft or harm at the hands of trespassers. Harbroe was not fired upon because he was the watchman in charge, but rather

because he was mistaken by the police officials for one of the burglars. The court said, in Harbroe's case, herein referred to: —

The question we have to determine is whether in the case at bar there was evidence upon which the Board could find that Harbroe's death arose out of a special risk incident to the performance of his duties as a night watchman. There was no evidence that this property ever had been injured by wrongdoers, or that from its character or location it was specially exposed to theft or harm at the hands of trespassers. He was not shot while protecting his employer's property from thieves. At the time of his accident the property was in no way threatened, nor did Harbroe suppose it was. He was not fired upon because he was the watchman in charge. The injury might quite as well have been suffered by any person who happened to be in the locality, whether employed by the construction company or not. Further, although Harbroe mistakenly believed that the two approaching figures were "yeggmen," they were in fact an officer of the law and his assistant, who were in the performance of their duty, seeking to apprehend the men who recently had robbed the post office. The injury which they inflicted was the result of an unfortunate misapprehension on their part (to which Harbroe himself unwittingly contributed), and cannot reasonably be said "to have had its origin in a hazard connected with the employment and to have flowed from that source as a rational consequence." (Reithel's Case, 222 Mass. 163, 165.) As was said in Madden's case, *ante:* "The rational mind must be able to trace the resultant personal injury to a proximate cause set in motion by the employment and not by some other agency, or there can be no recovery."

In Re Insurer's Claim that Harbroe's Injury was due to his Own Serious and Willful Misconduct. — The court says: —

The insurer contends that the employee was "injured by reason of his serious and willful misconduct." (St. 1911, c. 751, Part II., § 2.) According to the findings of the Industrial Accident Board he was defending himself from attack by men whom he thought to be desperate criminals. There was some evidence that he did not use his revolver until after they had given the command, "Hands up!" and had fired upon him and his companion, Trench. We cannot say, as matter of law, that the facts show such misconduct as would deprive an employee of compensation under the statute. And assuming that section 2 is applicable where the employee is killed (see Part V., section 2, defining "employee"), the same is true as to his dependents. (Nickerson's Case, 218 Mass. 158; Johnson *v.* Marshall, Sons & Co., Ltd. (1906), A. C. 409.)

Harbroe's Death arose in the Course of his Employment. — While the court decided that Harbroe's death did not arise out of the employment, it held: —

The finding of the Board, that Harbroe's injury arose in the course of his employment, has some support in the evidence. It occurred during his working hours, and on the path between the office and the machine shop of his employer. The fact that he and Trench had left the office after seeing the supposed "yeggmen" approaching is not conclusive that he had abandoned the care of his employer's property. He may have been on his way to some other part of the plant, where he would be in less apparent danger of bodily harm. At the time of the shooting he was in a place where he was accustomed to go in the performance of his duties. It is merely conjecture to say that he intended subsequently to leave the premises of his employer. (Pigeon's Case, 216 Mass. 51; see Ross *v.* John Hancock Mutual Life Insurance Co., *ante.*)

Dependency is not Total when Claimant has Separate and Independent Fund of her Own. — In Kenney's case, the decedent induced his sister to give up her employment fifteen years prior to his demise, and under his promise to support her claimant took charge of his household. The family comprised an invalid mother, who died later; a father, who died in 1910; a younger sister, the decedent, and the claimant. The sister paid $15 a month for her board, and the employee furnished all other money needed to support the household, every month giving the claimant $20 in money and $3 a week, the latter being the rental received from a house owned by the three in common. The decedent also paid the bills for rent, gas, coal and milk. In addition, he paid for all of the claimant's clothes and gave her whatever she needed. There was no agreement in regard to the payment of wages. The claimant had the sum of $600 in the bank and a one-third interest in the real estate above referred to, which was assessed for $1,300. The court says: —

In the case at bar the earnings of the employee were the chief source to which the claimant looked for her maintenance and support. Apparently his regular and substantial payments were given by him and received by her not as a gratuity but in recognition of a moral if not a legal obligation to support her, in accordance with the promise made when he induced her to become a non-producer. This is enough to create a relation of dependency as a basis of compensation. . . . While we

are of opinion that the facts warrant a finding that the claimant was "dependent," we do not think there was warrant for the finding that she was wholly dependent upon the employee's earnings for support at the time of his injury. Admittedly she had $600 in bank and one-third interest in unincumbered and productive real estate in Boston that was assessed for $1,300. This separate and independent fund of her own, available for her support, is too substantial to be ignored.

Dependents shall mean Members of the Employee's Family or Next of Kin who were wholly or partially dependent upon the Earnings of the Employee for Support at the Time of the Injury. — The record shows, in Kelley's case, that because of the death of his mother and the intemperate habits of his father the employee, a minor of sixteen years at the time of his fatal injury, lived at the home of his half brother, of whose family he was a member. The decedent contributed his entire weekly wages to the household fund, and the Industrial Accident Board held that the half brother and claimant was a dependent within the meaning of the act. The court, revising this decision, states: —

The facts shown by the record are that because of the death of his mother and the intemperate habits of his father the employee . . . lived at the home of the claimant, . . . of whose family he is expressly found to have been a member. The household affairs were managed by Mrs. McGrath, to whom her husband and the decedent gave their entire weekly wages, and from this fund the household, consisting of the employee and the husband and wife, with their two minor children, was supported. It followed that the employee was a member of the family of the claimant, who was partially dependent upon his wages for support. (St. 1911, c. 751, Part II., § 6; Dodge *v.* Boston & Providence Railroad, 154 Mass. 289, 290; Murphy's Case, 218 Mass. 278.) But as the employee's father survived, and section 2, Part V. of the statute, provides that dependents shall mean members of the employee's family or next of kin who were wholly or partially dependent upon the earnings of the employee for support at the time of the injury, the question is whether the claimant comes within the second clause of the definition.

Distinction appears to be that Decedent was a Member of Claimant's Family and that Claimant was not a Member of Decedent's Family. — In Kelley's case, *ante,* the distinction appears to be that the claimant, not being a member of decedent's

family, is not entitled to have his claim considered within the first of the two clauses defining dependents. Since McGrath was not a member of Kelley's family the case must be considered in the light of the second clause of the definition, viz., as to whether or not he was decedent's "next of kin."

Phrase "Next of Kin" defined. — After discussing cases bearing upon the meaning of the phrase "next of kin," and stating that these words as used in our laws uniformly refer to those who are nearest in degree by consanguinity, the court says: —

> It must be assumed that this term as used in the statute was intended by the Legislature to have this well-recognized meaning, and we cannot construe "next of kin" as being the equivalent of dependent next of kindred, which would embrace all dependents without regard to degree.

Living Apart by Mutual Consent is not a Living Apart for Justifiable Cause. — In Newman's case, where the record showed that the decedent and his wife were living apart by mutual consent, due so far as the evidence disclosed solely to the fact that he was earning but $11 a week and "was not supporting her (his wife) as she needed to be supported," the court says: —

> The correct determination of this question depends upon what is meant by the phrase "living apart for justifiable cause." These words have been interpreted by this court in numerous decisions. They have been construed in divorce proceedings brought by a wife against her husband for desertion, in petitions brought by her for separate support and maintenance as well as in actions brought against the husband to recover for necessaries furnished to his wife. These words have acquired a peculiar and appropriate meaning in the law. We are therefore bound to construe them in accordance with such meaning. This is the rule of exposition stated in R. L., c. 8, § 4, cl. 3. Where a woman lives apart from her husband, and it is contended that such separation is for justifiable cause, ordinarily it must appear that such living apart is due to some failure of duty or misconduct on the part of the husband, but this classification does not exclude cases of living apart because of physical or mental infirmities of either or both husband and wife. If the wife lives apart from her husband by mutual consent she is not living apart from him for justifiable cause, and she is not entitled to a divorce on the ground of desertion. (Lea *v.* Lea, 8 Allen, 418.) "A desertion consented to is not a desertion." (Ford *v.* Ford, 143 Mass. 577, 578.) . . . As the words in question have a well-settled and fixed meaning in the law, and as it is our duty in

interpreting them to give that meaning, it must be held upon the facts as disclosed by the evidence in this case that the wife of the deceased was not living apart from her husband for justifiable cause, and there was no evidence to warrant such a finding.

Average Weekly Wages as defined by Court in Bartoni's Case. — The main question involved in Bartoni's case was that of "average weekly wages." The evidence shows that the employee had been a laborer at the granite works of his employer, and that during the year preceding the injury he had not worked for a period of 12.97 weeks because of weather conditions. His total earnings were $449.76, and the Board found that his "average weekly wages" were $11.53; that is, the total sum earned by the employee was divided by the number of weeks during which labor actually was rendered. The court, in affirming this decision, states: —

The broad question, then, is the meaning of the words "average weekly wages" in the act as applied to kinds of employment where it is a necessary condition that by reason of inclement weather the employees should lose in each year a substantial aggregate of time. When our Workmen's Compensation Act was adopted it was obvious that the lack of accurate definition of average weekly wages in the English statute had given rise to considerable litigation. The English act was uncertain in this regard. It would have been an invitation to continued actions in the courts to have imported [imparted] its words into our act. Doubtless those who framed our act were aware of this embarrassment in the administration of the English act. In establishing a new definition of "average weekly wages" for our act it well may have been intended to obviate many of the difficulties which had been developed by experience under the English act. (See Report of Commission on Compensation for Industrial Accidents, 1912, p. 53.) The definition (Part V., § 2) in effect means that where a man works regularly for every working day for twelve calendar months preceding his injury, then his total wages received during that time are to be divided by fifty-two weeks, in order to ascertain his average weekly wage. The same rule is followed when no more than two weeks are lost by the employee during that twelve months. Thus wages are averaged for a year for such an employee. But where more than two weeks are lost during the twelve calendar months preceding the injury, then the "average weekly wages" on which the compensation payable under the act is based is found in a different way. It is ascertained by dividing the total amount received as wages during the twelve months by the weeks during which labor actually is rendered.

This is an Arbitrary Definition but it is the Standard established by the Act. — Referring further to the Bartoni case, the court says: —

It is an arbitrary definition of average weekly wages. In a sense it is an artificial average. But it is the standard established by the act. Whatever apparent confusion there may be in the definition arises from a preconception that the period over which the wages are to be divided must be the same in all cases in order to obtain an average. But that is not the theory of the definition. Whatever criticism may be made of the definition as thus interpreted, it at least has the merit of simplicity. It is explicit and readily understood. It is applicable to numerous craftsmen who are liable to lose much time during any period of twelve calendar months because of bad weather. It may have been thought by the Legislature that in case of injury to them the compensation payable under the act should be based on the wages which they receive when actually at work, rather than upon what would be a weekly average of their wages spread over the whole year including the days when they do not work as well as the days when they do work.

Meaning of Words "Time so lost." — The court says, with reference to the meaning of the words "time so lost" as used in the provision defining "average weekly wages," in the course of its decision in Bartoni's case: —

It has been argued that the words "time so lost" in the definition do not describe time during which one does not work because of bad weather. Whether that argument is sound depends upon the significance of the word "lost." Ordinarily, when that word is used in connection with the time of one who works, it means the time when one might have worked but was prevented. It often is employed to express the effect of weather. It is common speech to say of the carpenter, the mason, and others engaged in outdoor employment, that they have lost time because of rain, snow or cold. One is said to lose the pleasure of a journey because of rain, to lose the benefit of a vacation by reason of rough weather, to lose the grandeur of an extended mountain prospect because of mist, and to lose an opportunity because of a delayed train. This sense of the word "lost" is in accordance with a "common and approved usage of the language," the rule established by R. L., c. 8, § 4, Third, for the construction of words in statutes. It would be too narrow a definition to confine its scope to cases where the laborer might have worked but for some reason operating on himself alone and not affecting others in the same grade of employment. The plain and natural signification of the controlling words of the act covers such a case as the present. It would require some

refinement so to construe it as to exclude one who was deprived of work solely because of weather from the general classification of those who have lost more than two weeks' time in twelve months.

Weekly Award not Vested absolutely in Widow. — The court held, in Bartoni's case, that the right to the weekly award was not vested absolutely in the widow, but continued only during her life. The right to compensation on her account ceased with her death. (Murphy's Case, 224 Mass. 592.)

Demise of Widow before Payments were made is without Effect upon her Rights. — In Bartoni's case the widow died before compensation payments were started, and the court says upon this point: —

The administrator of the widow of the deceased employee is entitled to the weekly payment provided by Part II., section 6 of the act, "from the date of the injury" until the time of the decease of the widow. In this connection it is of no consequence that the widow deceased before payment was made to her. No compensation had been paid to her because of pending negotiations as to settlement for a lump sum. She was herself conclusively presumed to be dependent upon the employee, and the obligation rested strongly upon her to support their minor children. (Coakley's Case, 216 Mass. 71, 74.)

Surviving Minor Child comes within the Definition of "Dependents" given in Act. — The deceased employee in Bartoni's case left as his family a widow, now deceased, and five children, four of whom were over twenty-one years of age, and one of whom was fourteen years old. The brothers and sisters of the minor child agreed to release to him whatever rights they may have had to compensation, and the case was before the court to determine whether or not the minor child was entitled to compensation as a dependent of the decedent. Upon this point the court says: —

The minor child comes within the definition of "dependents" given in Part V., section 2, of the act, because he was a member of the employee's family as well as one of his next kin. (Cowden's Case, 225 Mass. 66.) By Part II., section 7 (*c*), he would be conclusively presumed to have been wholly dependent upon his father, the deceased employee, except that his mother survived and was conclusively presumed to be dependent.

Right of Board to review Weekly Payments. — The court refers, in Bartoni's case, to the Board's right, as provided by Part III., section 12, to review any weekly payment and to issue any order, in accordance with the evidence and subject to the provisions of the act, which it deems advisable, and says: —

This section in the original act, before the amendment, expressed in a crude way, in connection with other parts of the act (see Part V., section 2) the idea that the Board might adopt the relief afforded by the act to changed circumstances like those here disclosed. The amendment, which was part of an act embodying many perfecting provisions, made clear in this respect what was before somewhat obscure. Even though the injury in the case at bar occurred before the enactment of the amendment, the liability of the insurer is not enlarged. (See Hanscom *v.* Malden & Melrose Gas Light Co., 219 Mass. 111.) Moreover, this section is broad in its scope. It should be given a construction commensurate with its obvious purpose. It would be "subject to the provisions of" the Workmen's Compensation Act to order the payment of weekly compensation to be made to a minor child of the deceased employee actually dependent upon his father for support at the time of the latter's decease, after the decease of his widowed mother. The case at bar is the typical one referred to by way of illustration in Murphy's Case, 224 Mass. 502. What was there said by way of argument is now adopted as the ground of decision. (In Murphy's case, above referred to, the court said, in deciding that compensation was not a vested right, that there may be cases where on the subsequent death of the dependent it would be proper to send the case back for an opportunity to make a motion under St. 1911, c. 751, Part II., § 7, for a review of the order for compensation. "The case where an employee dies of an injury within the act, leaving a widow and children under eighteen years of age, would seem to be such a case.")

Phrase "Laborers, Workmen and Mechanics" interpreted by the Supreme Judicial Court. — The record shows that Devney was a hoseman and a member of a fire company stationed at one of the engine houses of the city of Boston. His dependent claimed compensation, alleging that decedent was a laborer, workman or mechanic in the employ of the city within the meaning of the St. of 1913, c. 807, which provides for the payment of compensation to "laborers, workmen and mechanics." There was no other question in the case except that as to the interpretation to be given to the phrase above referred to. After stating the law above cited, and reciting the

fact that the employee was a hoseman and a member of a fire company at the time of his fatal injury, the court refers to the acts of the Legislature creating a corporation known as the "Boston Firemen's Relief Fund"; that the decedent was obliged to wear a uniform and was subject to penalties for infraction of rules and discipline of the department; and to the fact that Devney was classified under the Civil Service regulations as a hoseman in "the official service" and not in the "labor service." The court then goes on to say: —

To ascertain its true construction, the statute under consideration may be read in connection with these statutes, and St. 1910, c. 196, St. 1912, c. 453, enacted in favor of firemen in other cities, and the R. L., c. 32 relating to fire departments, fire districts and firemen's relief funds, as amended by St. 1902, c. 108, § 1, St. 1906, cc. 171, 476, and St. 1911, c. 321. The Legislature at the date of enactment must be presumed to have known that under previous and unrepealed legislation the city, in common with other municipalities, had an established fire department with a fixed and permanent tenure of service for its members who had been expressly recognized as being in a class by themselves, and that this court, in Fisher *v.* Boston, 104 Mass. 87, had held them to be public officers for whose negligence when acting in the discharge of their duties the city is not responsible. (Shelton *v.* Sears, 187 Mass. 455; Woods *v.* Woburn, 220 Mass. 416.) If when extending the compensation act it also was the purpose to include all persons of whatever rank serving in the various municipal departments, plain and unambiguous terms should have been used showing the change and enlargement.

A Laborer ordinarily is a Person without Particular Training employed at Manual Labor. — The court goes on further to define specifically "laborer" and "workmen and mechanics," stating in Devney's case, *ante:* —

A laborer ordinarily is a person without particular training who is employed at manual labor under a contract terminable at will, while workmen and mechanics broadly embrace those who are skilled users of tools. (Oliver *v.* Macon Hardware Co., 98 Ga. 249; Ellis *v.* United States, 206 U. S. 246; Breakwater Co. *v.* Ottawa, 84 Kan. 100.) And the framers of the statute undoubtedly intended that the words "laborers, workmen and mechanics" should be taken in their ordinary lexical sense, which excludes the trained and disciplined force comprising the defendant's fire department.

Vocational Teacher charged with Duty of training Pupils through Precept and Demonstration to be practical Automobile

Repairers not a Laborer, Workman or Mechanic. — It was held by the court, in Lesuer's case, that a vocational teacher charged with the duty of imparting to his pupils, through precept and demonstration, knowledge of the use of various tools and machines, and of the practical application of them sufficient to fit the boys to be practical automobile repairers, was not within the scope of the act extending the benefits of the compensation law to "laborers, workmen and mechanics." The court says: —.

The words of the statute as applied to cities manifestly are not intended to embrace all persons of whatever rank in the service of a municipality, but are used in a restrictive sense designed to distinguish certain well-known classes of servants from other classes. The word "mechanic" as used in the statute connotes a manual occupation, — a performance of mechanical labor, or work at one of many constructive trades as a principal means of livelihood. It seems plain that the work performed by a professor or instructor in a polytechnical or occupational institute, in teaching or demonstrating the theoretical and practical use of mechanics as applied to the use of tools, appliances and machinery, is not that of a laborer, workman or mechanic, because the efficiency of the instructor depends in degree upon his skill in the use of tools. (Devney's Case, 223 Mass. 270; see White's case, *ante.*)

Procedure under Statute is according to Equity, and Appeal must be seasonably claimed. — In Humphrey's case, the court says: —

There was a final decree entered in the Superior Court. An appeal could be taken under the law only within twenty days from the date of entry of the decree. (St. 1911, c. 284, § 1.) The appeal actually was taken twenty-three days thereafter. The endorsement is "Filed and allowed by consent." Appeal from a final decree is matter of right and does not depend upon the allowance or discretion of the judge. It was said by Chief Justice Gray: "The time for claiming an appeal cannot be extended by consent of parties or by the justice whose decree is appealed from. . . . If an appeal is not taken within the time prescribed, the full court cannot acquire jurisdiction thereof otherwise than upon petition for leave to appeal according to the statute." (Attorney-General *v.* Barbour, 121 Mass. 568, 573.) That petition must be made directly to the full court within one year after the entry of the decree from which an appeal is desired. (R. L. c. 159, § 28.) The correctness of this statement of law is not open to doubt.

Since Married Woman cannot make a Valid Contract with a Partnership of which her Husband is a Member, manifestly she is not an Employee under Act. — In Humphrey's case the question was raised as to whether or not a wife can be an employee of her husband under the Workmen's Compensation Act. "Employee" is defined (St. 1911, c. 751, Part V., § 2) as including "every person in the service of another under any contract of hire, express or implied, oral or written," with certain exceptions not here material. The court says: —

Plainly a wife working for her husband is not within the scope of this definition. Obviously one cannot be an employee without a contract. That is recognized by the words of the act. Employment presupposes a contractual relation. A married woman cannot make a contract express or implied with her husband. (R. L. c. 153, §§ 2 and 4; Woodward *v.* Spurr, 141 Mass. 283, 284; National Bank of Republic *v.* Delano, 185 Mass. 424.) A married woman cannot make a valid contract with a partnership of which her husband is a member. (Edwards *v.* Stevens, 3 Allen, 315; Fowle *v.* Torrey, 135 Mass. 87.)

It is clear that Compensation Act does not purport to extend Obligations of Employer to Persons who were not Employees at Common Law or Outside Act. — The court goes on to state, in Humphrey's case, that the Workmen's Compensation Act does not purport to extend the obligations of the employer to persons who were not employees at common law or outside the act, except in the unusual case provided for in Part III., § 17, and referred to in White *v.* Fuller, 226 Mass. 1. It is a substitute for other common law and statutory remedies for those persons who rightly are included within the descriptive phrase of employees at common law. "Manifestly a wife cannot be an employee of her husband outside the Workmen's Compensation Act. She cannot be an employee of her husband under the terms of that act."

Doctrine of Estoppel not applicable in Humphrey's Case. — Referring to the contention of counsel for employee that the doctrine of estoppel should be applied as against the insurer, the court says: —

There is no ground for the application of the doctrine of estoppel against the insurer. Estoppel can result only from words or conduct which have induced another to change his position to his harm, and which

to a reasonable person ought to have seemed likely to produce that result. (Tyler *v.* Odd Fellows Mutual Relief Association, 145 Mass. 134, 138; Huntress *v.* Hanley, 195 Mass. 236, 241.) The record is utterly devoid of evidence upon which to base a finding of such conduct on the part of the insurer.

Right to select Attending Physician given to Insurer. — The court, in Pecott's case, stated that the right to select the attending physician is given by the statute to the insurer, and that only in cases of emergency or for other justifiable cause would the employee be entitled to engage his own physician at the expense of the insurer. The court says: —

Under the amendment of 1914, where a physician other than the one provided is called in case of an emergency, or for other justifiable cause, the insurer is required to pay for this service if in the opinion of the Industrial Accident Board the charge is reasonable and the cause of employment justifiable. By this change in the law provision was made for the case of emergency, — where there was imminent danger, where the suffering and pain were severe, where immediate attention was required and the services of the insurance physician could not be obtained in time to give relief. The amendment also was intended to apply to a situation where there was no actual emergency, but where the employee, acting as a reasonable man, would be justified in refusing the care of the physician selected by the company. There is nothing in the record of this case to show such an emergency or any cause which would justify a reasonable man in neglecting to seek the attention of the physicians named.

Employee who takes himself outside Sphere of Employment on Unauthorized Pleasure Ride not under Act. — The employee, in Penniman *v.* Massachusetts Employees Insurance Association, was engaged at a temporary crossover to direct cars and warn automobiles and other vehicles of the existence of danger. During the period of his employment at the crossover he "jumped" a car to take a ride, and while attempting to board another car to make the return trip he sustained a fatal injury. Held, that the injury did not arise out of the employment.

Functional Discomfort which causes no Incapacity not a Personal Injury. — The evidence showed that the employee in Murphy *v.* Travelers Insurance Company was not incapacitated for work, as claimed, by reason of a personal injury due to the lifting of a box in her place of employment, and that she suf-

fered only from a condition of discomfort which was purely functional and not incapacitating. Held, that she was not entitled to compensation.

Incapacity due to Physical and Nervous Effects of Injury covered. — In Dakin *v.* Employers' Liability Assurance Corporation, Ltd., it was held that incapacity due to the nervous and physical effects of the injury, and the employee's consequent inability to obtain employment, was covered under the act.

Inhalation of Emery Dust causes Pulmonary Tuberculosis. — The record in Roche *v.* Massachusetts Employees Insurance Association shows that the employee was subjected to the risk of inhaling emery dust in his place of employment, and that by reason of such exposure he contracted pulmonary tuberculosis. Held, that he was entitled to compensation.

Serious and Willful Misconduct claimed in Roche's Case. — The employee claimed double compensation, alleging serious and willful misconduct on the part of a superintendent of the subscriber, but the Industrial Accident Board held that the evidence did not warrant the assessment of double compensation.

Pneumonia and Endocarditis, following Hemorrhagic Appendicitis, have no Relation to Injury. — It was held, in Wadger *v.* Employers' Liability Assurance Corporation, Ltd., that pneumonia and endocarditis, following hemorrhagic appendicitis due to the injury, one month after employee's return to work, have no relation to such injury.

Redislocation of Shoulder while putting on Coat at Place of Employment a Personal Injury. — The employee, in the case of Hughes *v.* Employers' Liability Assurance Corporation, Ltd., received a personal injury which caused the dislocation of his right shoulder, and returned to work, having recovered sufficiently to permit him to resume his usual occupation. Later, while putting on his overcoat before leaving his place of employment, the shoulder became dislocated, and the employee again was incapacitated for work. Held, that the second injury was a recurrence of the first and arose out of the employment.

Hernia as a Personal Injury. — In the case of Gagnon *v.* Standard Accident Insurance Company, the claimant sustained a personal injury which developed into a condition of hernia as a result of the heavy lifting involved in nine years of car-

pentry work, plus a specific occurrence on a certain date when his foot slipped while "rolling up" a timber which rolled back and struck him in the groin. Held, that the employee was entitled to compensation.

Non-enforced Rule against cleaning Machinery in Motion not a Bar to Compensation. — The committee of arbitration held, in Addison *v.* Frankfort General Insurance Company, that the employee was entitled to compensation on account of an injury received while cleaning machinery which was in motion, notwithstanding the fact that a rule which was not enforced prohibiting the cleaning of machinery in motion was posted on the premises.

Injury by fooling does not arise out of the Employment. — While the employee was engaged in the performance of his work for the subscribers (see Clark *v.* London & Lancashire Guarantee and Accident Company) another employee took hold of the claimant and tickled him, with the result that the employee jumped and fell, sustaining a serious injury. Held, that the injury did not arise out of the employment.

An Assault by a Fellow Employee does not arise out of the Employment. — In the case of Tierney *v.* London Guarantee & Accident Company, Ltd., it was held that the claimant, who was assaulted by a fellow employee, was not entitled to compensation, such an occurrence not being a risk incidental to the employment.

Average Weekly Wages of Union Carpenter. — In McLean *v.* Contractors Mutual Liability Insurance Company, in the absence of other evidence, the union rate of wages of carpenters was accepted as the average weekly wages of the employee under the act.

Employee does not act unreasonably when he declines Operation upon Advice of Competent Expert. — It was held that the employee, in the case of Mandigo *v.* Fidelity and Casualty Company of New York, was not unreasonable in refusing to accept an operation for the removal of his injured eye when he was acting under the advice of a competent eye expert.

Refusal of Employee to accept Artificial Hand held to be unreasonable. — It was held, in Duda *v.* Massachusetts Employees Insurance Association, that the refusal of the employee to have

fitted an artificial hand furnished by the insurer was unreasonable, and that claimant's compensation should be forfeited during the period of his unreasonable refusal to accept the hand and prepare himself for the performance of light work which was available.

Similar action was taken by the Board, in the case of Lipka *v.* Massachusetts Employees Insurance Association, in which case the employee refused unreasonably to accept an artificial leg furnished by the insurer.

Arthritis in Finger Joints of Employee working as an Ironer not an Occupational Happening. — It was held, in Whalen *v.* Ætna Life Insurance Company, that the claimant who was employed as an ironer by the subscribers, and who became incapacitated for work because of arthritis in the finger joints, was not entitled to compensation.

Sciatic Neuritis due to Occupational Conditions. — In the case of Ellis *v.* London Guarantee & Accident Company, Ltd., it was held that the acceleration of a pre-existing condition by reason of the employee's exposure to a damp and wet condition at his place of employment was the cause of his incapacity for work from sciatic neuritis, and that compensation was due under the act.

Cigar Maker's Neuritis as an Occupational Disease. — The employee, a cigar maker, became incapacitated for work by reason of a condition of neuritis which manifested itself by numbness and weakness of the index finger of the right hand and a weakness of certain muscles of the right arm; and it was held, in Rodyk *v.* Royal Indemnity Company, that he was entitled to compensation.

Apoplexy Thirty-one Hours after Injury not related thereto. — The claimant was incapacitated for work thirty-one hours after he struck his head against a timber in the place of business of his employers; and it was held in Haley *v.* Employers' Liability Assurance Corporation, Ltd., that there was no relation between the injury and the apoplexy.

Evidence leaves Committee in Doubt as to Relation between Death from Acute Miliary Tuberculosis and Injury. — The evidence in McCarthy *v.* Massachusetts Employees Insurance Association shows that the employee sustained an injury from an abrasion which became infected, and that the employee re-

turned to work, remaining about three weeks, when he left his employment. Several months later he died of acute miliary tuberculosis. Held, that it was conjectural whether the death of the employee was related to the injury.

When Incapacity is due to Combined Effects of Two Happenings, Both Insurers are liable. — In the case of Wilds *v.* Massachusetts Bonding & Insurance Company and United States Fidelity and Guaranty Company, where the evidence showed that the employee quit the first employment on third day that he was employed because of swollen and blistered hands, and three days later, before his hands were better, entered second employment and subsequently became incapacitated by reason of a condition of sepsis, it was held that both insurers were liable and should contribute equally to compensation due.

Dependency as a Question of Fact. — In Curley *v.* Employers' Liability Assurance Corporation, Ltd., the nineteen-year-old daughter of the decedent kept house for him and was under no contract of employment and had no agreement with him as to the matter of wages. All her support came from her father, the deceased employee, who provided her with clothing, food and shelter. A brother and sister occasionally gave her small sums of money. Held, that claimant was wholly dependent for support. In the case of Welch *v.* Town of Framingham, where a daughter of decedent gave up work three years prior to his demise, because of ill health, and upon his promise to support her, and where the evidence showed all her support came from her father, it was held that she was wholly dependent. Likewise, in Roberta *v.* Employers' Liability Assurance Corporation, Ltd., where the father and mother of the decedent resided in a one-room structure in Italy and received the sum of $135 from the employee during the year preceding the date of injury and death, it was held that they were wholly dependent.

Sister of Employee entitled to Compensation as Next of Kin. — In McLean *v.* Contractors Mutual Liability Insurance Company compensation was awarded to the sister and claimant on the ground that she was his next of kin and partially dependent upon him for support at the time of his injury.

Independent Contractor or Employee. — The Industrial Accident Board held, in the case of O'Connell *v.* Royal Indemnity

Company, that the claimant, who owned two teams, one of which he drove himself, was an employee within the meaning of the act at the time of his injury. It appears that the claimant hired out both of his teams to the subscribers and that the latter also had teams of their own. The rate per day per team was $5. The subscribers had a contract to do rip-rapping on the banks of the Connecticut River and had constructed a roadway on the river bank for the purpose of permitting the delivery of stone obtained at the city stone crusher. While proceeding down this roadway, in accordance with the orders of the subscribers, the wagon tipped over and caused the injury. Held, that the claimant's injury resulted from his compliance with the orders of his master, and had no relation to the control, management and care of the horse which he was driving at the time.

In another case, that of Winn *v.* Town of Methuen, it was held that the claimant who, with his own horse and wagon, was working for the town, was an employee and entitled to compensation. He was engaged in hauling stone from the town crusher, and was under the direction and control of the town's foreman in the performance of this work.

When General Contractor is insured, Employee of Independent Contractor is entitled to Compensation. — It was held, in Mazariello *v.* Royal Indemnity Company, that the employee of an independent contractor who was not insured, and who was performing work for a general contractor who was insured, was entitled to compensation from insurer of general contractor.

Employee of Salvage Company not entitled to Compensation on Ground that Work performed by him was no Part of Subscribers' Business. — In the case of Goff *v.* Casualty Company of America it was held that the employee of a salvage company, which had taken a contract to remove certain materials and property damaged by fire from the premises of the subscribers, was not entitled to compensation under Part II., section 17, on the ground that the work in which he was engaged was not a part of the business of the subscribers.

Loaned Employee entitled to Compensation from Insurer of Subscriber. — It appears that the employee, in Fallon *v.* New England Casualty Company, had been ordered to report by his employer to another employer for one day, and that on the

night of that day he became incapacitated for work by reason of a condition of plumbism. Held, that he was entitled to compensation from subscriber's insurer.

Intoxication as a Bar to Compensation. — It was held, in the case of McGinnis *v.* Employers' Liability Assurance Corporation, Ltd., that the employee was intoxicated at the time of his injury and that he had not sustained the burden of proving that he received a personal injury, as claimed.

Neglect does not constitute Serious and Willful Misconduct. — In Johnson *v.* Contractors Mutual Liability Insurance Company the employee was obliged to remove a safety device temporarily, and later neglected to replace it. It was shown that his injury was occasioned by such neglect. Held, that the injury was not occasioned by the serious and willful misconduct of the employee.

Four Cases in which Malingering was alleged by Insurers. — In the case of Cousseiatis *v.* Security Mutual Casualty Company the evidence showed that an investigation among the employees who worked with the claimant had failed to produce any person who witnessed the alleged injury, and the medical evidence showed that since she was obviously able to do physical labor, although claiming she was unable to work.

The record, in the case of Lomaglio *v.* Royal Indemnity Company, shows that the impartial physicians were unable to discover any evidence of incapacity, and that they reported strong indications of exaggeration and malingering. Held, that the employee was not entitled to compensation.

In the case of Defeo *v.* Ocean Accident and Guarantee Corporation, Ltd., the insurer suspended compensation payments, claiming that the employee was a malingerer and able to resume employment. The Board's medical adviser examined him and stated that the injury had aggravated a pre-existing condition and that certain mechanical changes were necessary in order to restore employee's working efficiency.

In Hassan *v.* Massachusetts Employees Insurance Association insurer claimed employee was a malingerer, but impartial medical advice indicated an incapacitating condition, diagnosed as a subluxation of the sacroiliac joint.

Claim for Compensation not barred when Parties negotiate for Settlement and then fail to agree. — It was held, in Dow *v.* City of Newton, that a formal claim for compensation, filed after

the statutory period had expired, was not barred when the parties had for some time prior to the expiration of the statutory filing time negotiated for settlement by correspondence, conference and appearance before a committee of the city government.

Assessment of Costs of Hearing upon Claimant. — In the case of Andractan *v.* United States Fidelity and Guaranty Company the costs of the hearing were assessed upon the employee because he prosecuted his claim without reasonable cause. It appears that the employee told conflicting stories of the alleged occurrence to fellow employees, insurer, his attorney, who afterwards declined to represent him, the Industrial Accident Board, and others.

Term "Proceed at Law" interpreted. — In the case of Ford *v.* City of Newton the evidence showed that the employee had been engaged by an independent contractor to perform certain work under his contract with the city of Newton, and that while engaged in the performance of this work he sustained an injury. Later, he brought suit against the independent contractor, who made a settlement with him through his attorney. Subsequently, the employee claimed compensation under the Workmen's Compensation Act. Held, that the employee had "proceeded at law" within the meaning of Part III., section 15, and that he had no claim under the Workmen's Compensation Act.

Full Reports follow. — Full reports of the decisions referred to in this introduction, as well as the reports of many other important cases, will be found in the pages which follow.

INDUSTRIAL ACCIDENT BOARD,

FRANK J. DONAHUE, *Chairman.*
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.
CHESTER E. GLEASON.

ROBERT E. GRANDFIELD, *Secretary.*

The Commonwealth of Massachusetts.

INDUSTRIAL ACCIDENT BOARD.

REPORTS OF CASES UNDER THE WORKMEN'S COMPENSATION ACT, JANUARY 1, 1915, TO JUNE 30, 1915, INCLUSIVE.

CASE No. 1251.

ALI HASSAN, *Employee.*
AMERICAN STEEL AND WIRE COMPANY, *Employer.*
MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DURATION OF INCAPACITY FOR WORK. ABILITY TO EARN. MALINGERING. INCAPACITY DUE TO SUBLUXATION OF THE SACROILIAC JOINT. METHOD OF DETERMINING QUESTION OF MALINGERING. EMPLOYEE ABLE TO EARN WAGES AS COOK. UNABLE TO PERFORM CUSTOMARY WORK. COMPENSATION AWARDED ON PARTIAL INCAPACITY BASIS AFTER CERTAIN DATE.

This employee received a personal injury arising out of his employment while wheeling a load of wire on a truck on his employer's premises. One of the wheels hit a small stick, causing the load to tip up, and he was thrown against the side of the building, receiving an injury to his back. The insurer claimed that he was malingering, and it was necessary to have the employee carefully observed and examined at a reputable hospital in order to receive the opinion of impartial experts to help determine this question. The hospital authorities reported that, prior to manipulation under ether, the patient was unable to get out of bed; after such manipulation he was apparently free from pain and could move his legs for a time. The condition was diagnosed as subluxation of the sacroiliac joint. After a certain date the employee was able to perform light work as a cook, but was unable to do his usual work.

Held, that the employee was entitled to compensation in accordance with his ability to earn.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Ali Hassan *v.* Massachusetts Employees Insurance Association, this being case No. 1251 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, George F. McInerny, representing the employee, and George A. Drury, representing the insurer, after being duly sworn, heard the parties and their witnesses at City Hall, Worcester, Mass., on Tuesday, Jan 19, 1915, at 10 A.M., and a continued hearing Feb. 3, 1915, at the Hearing Room of the Industrial Accident Board, Boston, Mass.

John W. Cronin appeared as attorney for the insurer, and Edward A. Ryan appeared for the employee.

This employee received an injury arising out of and in the course of his employment on Nov. 12, 1913. While he was wheeling a load of wire on a truck on the premises of his employer's plant one of the wheels hit a small stick, causing the load to tip up, which threw him against the side of the building, thereby injuring his back.

The question before the committee was whether the employee was malingering, or whether he had been incapacitated for work since receiving his injury.

His average weekly wages were $11.49, and he was paid compensation by the insurer at the rate of $5.75 from the date of the injury to July 27, 1914.

He was admitted to the Worcester City Hospital Nov. 12, 1913, and remained until Nov. 28, 1913, at which time he was discharged, relieved. The report of the hospital was before the committee. He was admitted again to the same hospital on April 17, 1914, and discharged on June 17, 1914, as nothing definite could be made of his case.

Dr. M. F. Fallon of Worcester, Mass., an impartial physician appointed by the Board, testified that he examined the claimant on July 24, 1914.

He walked with apparent difficulty, keeping his hand on his back. He said he couldn't stoop over, and all motions of his back were painful. In my opinion there is no deformity of the spine throughout its whole length. The nerves were normal. His legs were all right, with no limitation of motion. I could find no disease of this man's back that would warrant his apparent disability, and in my opinion, after several examinations of this man (and in addition to my examination I sent to the City Hospital and asked for the full report of his condition there), this man is malingering.

Dr. Philip H. Cook testified that he was a specialist in X-ray work and did work for the Worcester City Hospital; that he made an X-ray examination of the claimant at his office and house, and neither examination disclosed a subluxation of the sacroiliac joint.

Ali Hassan, the employee, testified that he was a native of Turkey; that he was pulling a truck along the floor with another man, and it was stopped suddenly by one of the wheels hitting an object, and he was struck on his back by the truck and pushed against the wall. The barrel contained wire weighing about 2,200 pounds, so that both the weight of the truck and the wire came against his back. The foreman took him to the hospital in an ambulance, as he was unable to walk. He felt pain in his back. He was at the hospital for eighteen days the first time. He was unable to work when he came out on account of the pain. He testified that he had been in the Massachusetts General Hospital for three weeks, and that he had not been able to work since the injury. His body was in a stiff supporting jacket or cast at the time of the hearing, which had been placed upon him by the Massachusetts General Hospital as a treatment for a subluxated sacroiliac joint which the hospital had diagnosed as his ailment.

Frederick Carroll of Worcester, Mass., called by the insurer, stated to the committee that the truck was piled with wire to such a height that it hit the frame of the door, thereby jerking the truck around, and the claimant was thrown up against the wall. He was of the impression the wire fell from the truck upon him, although he was not positive of this fact.

Dr. Frank W. George testified that he examined the claimant and had charge of the department in which he was examined at the City Hospital. When he first saw the claimant he went

over him and gave him the usual test for bone lesion, and the least movement he would put upon his leg seemed to cause him pain. He observed him for several days and thought he could help him by putting on a plaster cast. The cast was taken off and he still complained. The more he saw of him the more he felt he didn't have an abnormal lesion. He observed him walking and it didn't seem possible that the man could be complaining all the time as he apparently was. He made X-ray plates and was unable to find any abnormality whatever. There was nothing that he could interpret as sacroiliac subluxation. He did not see how it was possible for any one to have a subluxation of any joint without its being disclosed by the X-ray. The X-ray was negative.

Dr. Walter C. Haviland testified that he examined the claimant on Dec. 27, 1913, for the purpose of ascertaining the condition of his nerves; that is, if he had received any injury to his nervous system. He found no injury to the nervous system, and suggested that some X-ray photographs be taken to see if any further light could be thrown on the case. He stated that the first test was the test of the motor and sensory nerves, to find out whether there was any paralysis. There was no paralysis of any member of his body. He tested the sensation of his leg and there was no injury to the sensory nerves. He tried the different reflexes, such as the knee jerk and the ankle jerk, and these nerves were all found normal.

Dr. William H. Rose, called by the insurer, testified that the claimant was brought in an ambulance to the hospital, where he remained from November 12 to the 28th. When he was first injured it looked to me as if he had a severe sprain of the muscles of the back. He was treated and a plaster cast was applied. The cast was taken off and a corset put in its place which fitted very tightly over the pelvis and back. He was given massage. I became convinced that he was more or less of a malingerer, so much so that I put it up to the company to have him placed in the hospital for observation.

Dr. E. G. Brackett, appointed by the Industrial Accident Board as an impartial physician, testified that he had seen the claimant in the ward at the Massachusetts General Hospital; that he had been injured by some heavy trauma about a year before: —

He said he had pain in his back and leg, and was unable to move, except very little, without a great deal of pain. I found his back was almost entirely rigid, with a great deal of muscular spasm. Any motion of his back when he was lying in an upright position was very limited — hardly any motion at all. He always complained of pain in the lower part of his back and down one of his legs. The pain was always referred to by the way he put his hand on the back of the leg along different points of the sacroiliac nerve. No matter whether he raised the left or right leg the pain was always in the same place. I tried to have him stand, but it was almost impossible for him to get out of bed. I tried to have him stoop over, which he was unable to do. The muscles of his back were contracted with very rigid spasm. From physical signs I felt he had some lesion or some trouble in his sacroiliac region. We felt there was probably a traumatic condition of that joint. It seemed as though there was a difference in the relation of the two sides of the sacrum and ilium. We had the patient etherized, and went through the ordinary methods of manipulation, and we heard nothing at the time. The next day he was apparently quite free from pain and able to move his legs. We thought he had a subluxation of the sacroiliac joint.

The doctor stated that the X-ray would not always disclose a subluxation; but if there were a marked subluxation one would expect to find it in the X-ray. He testified that he was led to think the employee had a sacroiliac subluxation by the great rigidity of his spine and the very marked muscular spasm, the location and distribution of his pain, the general motions which brought out that pain, and the difference to the touch of the bony prominences of the back. In feeling down the posterior spine of the ilium on to the sacrum, on the one side, you felt a greater depth than on the other. There was no special atrophy of the leg shown; but if one had a bad subluxation, which was seriously irritating the sciatic nerve, there would likely be some atrophy in the leg. These subluxations are usually found on one side. The doctor stated that the limitation of motion was usually on the side of the subluxation. The subluxation had been reduced when the claimant was etherized, and the adjacent bones of the joints manipulated into their proper places as far as possible. The fact that the claimant appeared better after this was done was evidence that the trouble was correctly diagnosed as a subluxated sacroiliac joint, and that he was being given proper treatment in the attempt to put and keep the sacroiliac bones in place. There is great

likelihood that the bones will slip back and the subluxation recur if the position of the back is not held fixed and the treatment carefully continued.

Frank S. Lindley, employed as tracer for the American Steel and Wire Company, testified that he had looked the claimant up since his accident. He was coming down a street in Worcester on Jan. 29, 1915, and saw Hassan at the back of a house getting coal and carrying it in. He stated to the committee that he was making a call near by and happened to pass by the house Hassan was in, and saw him come out and go to the coal bin and pick up some coal in a small stove shovel. Hassan walked and moved slowly, but stooped over naturally when he picked up coal in the small shovel. The witness believed that Hassan had been really injured and incapacitated for a considerable period after his accident.

Ahmet Hammon, called by the insurer, testified that he had boarded in the same house with the claimant for some time; that quite a number of his countrymen, including the claimant, lived there; that some of them worked and earned wages, and others were out of work and earning nothing; that their regular cook had left some months ago and since then the claimant had acted as cook, though the other men who were out of work helped him with lifting and with the labor that was too hard for the claimant to do; that the claimant got his board and room in return for this work, his room, however, being a small one on the top floor, and not as good as those of the other lodgers.

The committee finds on the fair preponderance of the evidence that the claimant is suffering from a subluxation of the sacroiliac joint caused by the injury received in the course of his employment on Nov. 12, 1913; that, although he got some relief after the subluxation was reduced and treated by Dr. Brackett at the Massachusetts General Hospital, which treatment is still continuing, he is still incapacitated for work thereby, such as the laborer's work which he used to perform, and has been thus incapacitated since the injury; that he is entitled to his weekly compensation for total disability at the rate of $5.75 per week from July 27, 1914, when it was stopped, to Jan. 29, 1915, when he began to do some light work as cook, assisted by his fellow countrymen, for which work he

received his humble board and lodging which, the committee finds, were worth $3 per week, his compensation for this period, twenty-six and four-sevenths weeks, amounting to $152.79; and that he is entitled to a compensation since said Jan. 29, 1915, to Feb. 3, 1915, the date of the last hearing, of $4.25 per week, a period of six-sevenths of a week, being one-half the difference between his average weekly wages of $11.49 before the injury and his earnings of $3 per week at light work in cooking, said last item of compensation amounting to $3.64, and said weekly compensation of $4.25 shall continue thereafter during his said disability and while he is earning said $3 per week.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

DAVID T. DICKINSON.
GEORGE F. MCINERNY.

George A. Drury dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, April 22, 1915, at 3 P.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that the employee received a personal injury arising out of and in the course of his employment by reason of which he has been incapacitated for work, as shown in the detailed report filed by the committee of arbitration. This incapacity for work is due to an injury to the lower part of his back, which occurred while he was wheeling a truck load

of wire on the premises of his place of employment on Nov. 12, 1913. One of the wheels of the truck hit a small stick, causing the load to tip up, throwing the employee against the side of a building and causing the injury referred to.

The Board therefore finds that the employee is now partially incapacitated for work as a result of the personal injury received by him on Nov. 12, 1913, said partial incapacity continuing, and that there is due the employee a weekly total incapacity compensation of $105.82 for a period of eighteen and three-sevenths weeks and a weekly partial incapacity compensation of $4.25 for a period of nine weeks, the total sum due to Feb. 3, 1915, being $144.07.

The Board finds, further, that the employee continues to be partially incapacitated for work by reason of the injury, and that the insurer should continue to pay him a weekly compensation of $4.25 pending a revision of this order, after review, under Part III., section 12.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1290.

LUIGI DEFEO, *Employee.*
LUCIUS ENGINEERING COMPANY, *Employer.*
OCEAN ACCIDENT AND GUARANTEE CORPORATION, LTD., *Insurer.*

DURATION OF INCAPACITY FOR WORK. ABILITY TO EARN. MALINGERING. INSURER SUSPENDED COMPENSATION BELIEVING THAT EMPLOYEE WAS ABLE TO WORK. IMPARTIAL EXPERT REPORTS THAT INJURY AGGRAVATED PRE-EXISTING CONDITION. CERTAIN MECHANICAL CHANGES RECOMMENDED. COMPENSATION AWARDED.

It appears that the employee's compensation was suspended because the insurer believed, on the report of its examining physician, that he was a malingerer and able to go to work. The medical adviser of the Board examined him and found that the injury has aggravated a pre-existing condition, and that certain mechanical changes were necessary in order to restore his working efficiency.

Held, that the employee was entitled to compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Luigi Defeo *v.* Ocean Accident and Guarantee Corporation, Ltd., this being case No. 1290 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Charles E. Lawrence, representing the insurer, and Henry H. Lepper, representing the employee, heard the parties and their witnesses in the Hearing Room of the Industrial Accident Board, 1 Beacon Street, Boston, Mass., on Friday, Feb. 12, 1915, at 10 A.M.

John A. Thayer appeared as counsel for the employee, and James T. Connolly appeared as counsel for the insurer.

It was agreed that Luigi Defeo of West Warren, Mass., while acting in the scope of his employment, received an injury on July 15, 1914, and was entitled to the payment of $10 a week during total incapacity. The only issue was whether or not incapacity had ended, the insurance company having stopped compensation on Oct. 20, 1914.

Testimony was given the committee by Dr. L. R. G. Crandon, Dr. Howard A. Lothrop and Dr. Francis D. Donoghue, medical adviser of the Industrial Accident Board.

Dr. L. R. G. Crandon had examined the man as the impartial physician appointed by the Board, and at the hearing also examined him as the impartial physician, and testified that the man was still incapacitated.

Dr. Howard A. Lothrop, the examiner for the insurance company, felt that the man was a malingerer, and that he was able to go to work and had been for some time.

Dr. Francis D. Donoghue, who examined the man in company with Dr. Lothrop, stated that the injury had aggravated a pre-existing condition, and that the man was still incapacitated; that in order to overcome the trouble from which he was suffering, certain mechanical changes, such as a different heel to his boot and a support to his foot which would throw the foot

so as to change his tread, would overcome the difficulty; and that from four to six weeks would probably be the limit of his disability, if these things were attended to. Dr. Lothrop admitted that it would be necessary for him to change his tread in order to get back into normal shape.

We find, therefore, on the weight of the medical evidence, that Defeo is incapacitated as a result of the injury; that this disability may continue for some weeks; that the man should follow the suggestion of Dr. Donoghue; that he probably would not in any other way change his tread, as he has shown no indication of so changing up to the present time, but that if he does do what he was instructed to do by Dr. Donoghue his incapacity will very shortly disappear. The committee strongly recommends that he follow the advice given him by the medical adviser of the Industrial Accident Board.

We find that he is entitled to recover $10 a week from Oct. 21, 1914, up to the present time, Feb. 12, 1915, a period of sixteen and two-sevenths weeks, amounting to $162.86, said payments to continue under the conditions outlined in the above.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

DUDLEY M. HOLMAN.
HENRY H. LEPPER.

Charles E. Lawrence dissents.

CASE No. 1336.

PHILLIPPE BERGERON, *Employee.*
CITY OF FALL RIVER, *Employer.*
LONDON & LANCASHIRE GUARANTEE AND ACCIDENT COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DISEASE. PNEUMONIA. EMPLOYEE ALLEGES THAT CHANGE IN TEMPERATURE BRINGS ON PNEUMONIA. EVIDENCE FAILS TO SHOW CAUSAL CONNECTION BETWEEN EMPLOYMENT AND DISEASE. COMPENSATION NOT AWARDED.

The employee, a janitor, claimed to have received a personal injury arising out of his employment by reason of the receiving of a chill on April 11, 1914, while sweeping the stairs of a schoolhouse. Previously, he had been occupied for a period of several hours stoking the furnace, and stated that he had become overheated thereby. The medical evidence showed that the employee was treated for a condition of pleurisy from April 12, 1914, to April 17, 1914, and that on April 18, 1914, pneumonia had set in for the first time. There was medical evidence to the effect that the chill of pneumonia is not the chill that is due to a change in temperature, and that the pleurisy for which the employee was treated was a symptom of a tuberculosis process which is more or less chronic.

Held, that the employee did not receive a personal injury arising out of his employment.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Phillippe Bergeron *v.* London & Lancashire Guarantee and Accident Company, this being case No. 1336 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, John F. Doherty, representing the employee, and Cornelius W. Donovan, representing the insurer, heard the parties and their witnesses in Committee Room No. 35, City Hall, Fall River, Mass., on Tuesday, Jan. 19, 1915, at 10.30 A.M.

John T. Swift appeared as counsel for the insurer. The employee was not represented by counsel.

It was agreed that Phillippe Bergeron was employed as a schoolhouse janitor by the city of Fall River, and that the school department of Fall River was insured in the London & Lancashire Guarantee and Accident Company; that his average weekly wages were $14.50; and that he was in the employ of the city of Fall River on April 10, 1914.

Phillippe Bergeron, the employee, stated that his claim was that he caught cold and it developed into pneumonia.

Phillippe Bergeron testified that on the Saturday before Easter, April 11, 1914, he was doing his cleaning in the schoolhouse, washing and scrubbing. He went down to the boiler room and fixed his fires and then came up and started to do the sweeping. He had the windows open. He became overheated while doing so, having been occupied several hours in stoking the furnace, in taking out and shoveling his ashes, and in tending the furnace. He then, while in an overheated condition, went to the top of the building, opened the windows in the hall and stairways, and started to sweep down these stairs with a hand brush and a duster. While so engaged he had a chill. It was not a severe, violent chill with chattering teeth and a numbness; it was a creeping chill. It affected him so that he went home and went to bed. He stayed in bed that day, and that night he felt a pain. The next morning he was all doubled up and sent for the doctor. He was in bed three weeks, and did not get back to work until the first Monday in June. He stated that he felt all right when he went to work that morning. He had not had any trouble at all before that day. He had had a cold that winter, some six weeks before, but had recovered from it. The work he was doing at that time was extra work, being done during vacation time, and he had to do the work as it came. He went to the schoolhouse about 6.30. Because of the chill he had he went downstairs, left his broom and other things, and went home. Dr. Cox was called, and within twenty-four hours from the time he had this chill the doctor pronounced it pneumonia. He should judge that the 11th was a cold, chilly morning. He had not been exposed to any unusual cold or anything of that sort. It was around Christmas time that he got a cold, and he did not have it when he got the pneumonia.

Dr. Wilfred Trudeau testified that he was a practicing physician in Fall River, and had been for thirty years. He was called to attend Mr. Bergeron some time in April. He did not have his books with him, and for that reason could not tell the exact dates, as he was notified to be present about fifteen minutes before the hearing took place. When he first saw him, his temperature was 104 and pulse 135 or 140. He was coughing very badly, sweating, greatly depressed and in a very weak condition. He was spitting blood, was very thirsty and was spitting phlegm mixed with blood. When he saw him he was in the first stages of pneumonia. He had known Bergeron for thirty years. He had not seen him immediately before this trouble. He did not know what the condition of his health was immediately preceding this time. His lungs were very heavy and consolidated. It takes pneumonia a few minutes or a few hours to develop after an exposure, though it is not always pneumonia, — it may be bronchitis or grippe. The chill is almost the start. In pneumonia the patient either gets better or very much worse at the end of seven days. It is divided into three stages. The first stage develops in a few days. In response to a hypothetical question, "Assuming that the man had worked for several hours in the furnace room, got overheated perhaps, had then gone from the furnace room to the top of the building, opened the windows and then started to sweep down the stairs, and while he was engaged in that he was taken with a chill and the chill affected him so strongly that he quit work and went home and went to bed, — that would be about noon Saturday, — and that the following day, on Sunday, about 10 o'clock, feeling no better and possibly worse, he called the doctor and continued feeling bad, would you say that there was any causal connection between what he was doing and the condition in which you found him?" the doctor replied, "Yes."

Dr. Thomas Cox testified that he has been a practicing physician in Fall River for fifteen years. He was called to attend Bergeron some time in April. It was on a Sunday morning, but he does not remember the date. He found Bergeron suffering from pleurisy. He got the history that it started with a chill and then pain in the side followed. He had

that pleurisy condition for some time. While he was under his charge it did not develop into anything else; it was just inflammation of the pleura. He attended him about two weeks, when another physician was called. At the time he last saw him his condition was about the same, — the pleurisy was running its course. He had about the same amount of fever and pain. There was no indication at that time of pneumonia. He had known Bergeron for about thirty years, and found him to be pretty healthy. He thought he treated him about eight or ten days. In answer to a hypothetical question, "Assuming, Doctor, that this man had gone to work feeling, as he described, lazy, in the morning about 6.30, and that for several hours he had been down in the furnace room tending the furnace, seeing that the schoolrooms were raised to a certain temperature, and shoveling coal; then, while he was in a heated condition, he went to the top of the building and opened some windows and started to sweep down some stairs in the hall where there was a draft blowing on him, and he felt a chill sufficiently severe to cause him to quit his work, and then he went home and went to bed, and felt so badly the next day, not having gotten out of bed in the meantime, that he was compelled to call a physician — is there any connection, in your mind, between the work that he was doing on the day before and the condition in which you found him when he called you?" the doctor replied, "Assuming that, yes." The chill would be the first symptom of the coming on of pleurisy. He would say that the condition he found him in pointed back to that chill as the starting point. He felt quite confident that the last time he saw him pneumonia had not developed. The doctor thought he was coming along slowly. He never consulted with Dr. Trudeau, and never gave him a history of the case. He was not delirious at any time he was there. During the time he treated the man, to his knowledge, he had no other chills. When he last treated him there were no symptoms of pneumonia.

Dr. Charles A. Howland testified that he has been a practicing physician for seven years; he is connected with the Union Hospital in Fall River, — is on the staff, and he has treated a great many cases of pneumonia and pleurisy. Pneumonia is a

specific, infectious disease. The chill of pneumonia is not the chill that is due to a change in the temperature.

Q. Would you say that this same condition would not have developed without the exposure described? A. Absolutely no. The man might have had the chill and the sickness if he had not been near the schoolhouse. No one can say that he would not have had the same condition if he wasn't near the schoolhouse. He might have had it if he stayed at home; in fact, the chances are that he would have. No one can state definitely that he would or would not have had it.

The conditions described were undoubtedly provocative of what followed. A man who goes from high to low temperature invites trouble, especially if he is in a subnormal condition, but it is pure conjecture to say that he would have had the trouble if he were not exposed. Either of two things is true, — he had the chill and had pneumonia immediately, or he did not have pneumonia. A chill is followed by pneumonia immediately, and one cannot place three, five or six days between the chill and the pneumonia. He had pneumonia right away if that were a pneumonia chill. When a man has pleurisy that is more or less chronic, it is a tubercular process, — pleurisy is a symptom.

Dr. Thomas Cox subsequently, in response to a letter from the chairman of the arbitration committee, stated that he attended this man eight times, from April 12 to April 17, inclusive.

Dr. Wilfred Trudeau, in response to a similar letter, wrote that he was called to attend Phillippe Bergeron on April 18, 1914.

On the medical evidence, it appears that Dr. Cox treated the man from April 12 to April 17, inclusive. The chill was on April 11. Dr. Cox states that in that period at no time did this man have pneumonia; that he was suffering from pleurisy. Dr. Trudeau attended this man beginning with April 18, and he states that the man then was in the first stages of pneumonia. On his testimony the first stage of pneumonia exists about three days. The testimony of the doctors in regard to the time between the various happenings tends to confirm the belief that there was no relation between the so-called chill of April 11 and the pneumonia from which he was suffering some ten or twelve days after the chill.

We find therefore, on all the evidence, that he has failed to establish any connection between something that arose out of his employment and the pneumonia from which he suffered, and that he is not entitled to recover compensation.

DUDLEY M. HOLMAN.
CORNELIUS W. DONOVAN.

John F. Doherty dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, March 25, 1915, at 2 P.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The report of the committee shows that the employee, Phillippe Bergeron, claims to have received a personal injury arising out of and in the course of his employment by reason of the receiving of a chill on April 11, 1914, while sweeping the stairs of the schoolhouse of which he was the janitor. Previously he had been oecupied for a period of several hours stoking the furnace, and had become overheated thereby.

The medical evidence shows that the employee was treated by Dr. Thomas Cox, from April 12 to April 17, 1914, inclusive, for pleurisy. Dr. Wilfred Trudeau treated the employee on April 18, 1914, and thereafter for some time, the exact dates not being given. The employee was then in the first stage of pneumonia. This stage lasts three days. Dr. Charles A. Howland testified that the chill of pneumonia is not the chill that is due to a change in the temperature, such as claimed by the employee, and stated that the pleurisy for which he was treated by Dr. Cox was a symptom of a tubercular process,

which is more or less chronic. If the pneumonia came from the chill it would have come immediately, and it cannot be said that a chill is followed by pneumonia in three, five or six days after the occurrence of the chill.

The Industrial Accident Board finds upon all the evidence that the employee, Phillippe Bergeron, did not receive a personal injury arising out of and in the course of his employment, and that no compensation is due the said employee under the statute.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE NO. 1337.

FRANK DUDA, *Employee.*
BERKSHIRE COTTON MANUFACTURING COMPANY, *Employer.*
MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

DURATION OF INCAPACITY FOR WORK. REASONABLENESS. EMPLOYEE UNREASONABLY REFUSES TO HAVE ARTIFICIAL HAND FITTED AND FURNISHED BY INSURER. LIGHT WORK WHICH HE CAN PERFORM AVAILABLE. COMPENSATION FORFEITED DURING PERIOD OF UNREASONABLE REFUSAL.

The employee received a personal injury arising out of his employment which necessitated the severance of his right hand, and he became entitled, automatically, to total incapacity compensation during the period of his inability to earn wages, and to specific compensation on account of the loss of the hand for an additional period of fifty weeks. It appeared in evidence that the employee had been requested on numerous occasions to go with a representative of the insurer to Springfield to have an artificial hand fitted, that the Industrial Accident Board had advised him of his duty to have the hand fitted, and that the insurer would pay all the expenses incurred in connection with the journey and the fitting and furnishing of the hand. He declined to go, and the case came before the committee for adjudication. The insurer had work available which he could perform as soon as the hand was fitted.

Held, that the employee's compensation should be forfeited during the period of his unreasonable refusal to have the artificial hand fitted and prepare himself for the performance of work.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Frank Duda *v.* Massachusetts Employees Insurance Association, this being case No. 1337 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Arthur W. Safford, representing the employee, and George E. Morris, representing the insurer, heard the parties and their witnesses in the Selectmen's Room, Town Hall, Adams, Mass., on Tuesday, Jan. 12, 1915, at 10 A.M.

It was agreed that Frank Duda, while employed by the Berkshire Cotton Manufacturing Company, on Monday, Feb. 16, 1914, at 5 P.M., received an injury arising out of and in the course of his employment which resulted in the amputation of his right hand above the wrist.

It was agreed that his average weekly wages were $7.75 a week; that he was entitled to the minimum compensation, namely, $4 a week during his period of total incapacity; and that he was also entitled to the specific payment of $4 a week for a period of fifty weeks for the loss by severance of his right hand.

The sole question at issue was whether or not incapacity ceased on Oct. 4, 1914, the date of the last payment to him, and whether or not he unreasonably refused to return to work, employment having been found for him at the Berkshire Cotton Manufacturing Company's plant, — such work that he could do as a one-armed man.

It appeared in evidence that the Massachusetts Employees Insurance Association, the insurer in this case, had repeatedly requested Duda to go with its representative to Springfield for the purpose of having an artificial hand fitted to him, the insurance company agreeing to pay the cost of his expenses to Springfield and return, and to buy him an artificial hand which would enable him to return to work.

It appeared in evidence that this information was communi-

cated to Duda by the Industrial Accident Board, which suggested to him that he carefully consider the offer of the insurer and accept the same without delay, since his failure to act reasonably, if it should appear that he acted unreasonably, might operate to prejudice his right to compensation under the act. It was pointed out to him by the Industrial Accident Board that an artificial hand would restore him to at least partial working efficiency, and that he owed it to himself as well as to the insurance company to make every reasonable effort to prepare himself for further employment. It also appeared from the correspondence which was exchanged between the Industrial Accident Board and Duda that he was asked to go to the Springfield office of the Industrial Accident Board, 423 Main Street, Springfield, Mass., on the Tuesday next following October 30, to consult with Mr. Carroll, chairman of the Board, and in any event to write the Board his reasons for refusing the offer.

Frank Duda, the injured employee, testified that he had received the letters from the Industrial Accident Board; that he had been asked to go to Springfield to meet Mr. Carroll; that the insurance company had offered to pay his expenses and had offered to purchase an artificial hand; that he had not felt able to go to work; and that he had refused to go to Springfield or take the matter up with Mr. Carroll, the chairman of the Industrial Accident Board, at Pittsfield.

Walter J. Donovan, who at one time acted as attorney for Duda, testified that he had advised Duda to accept the offer of the insurance company, and a letter was introduced in evidence which Mr. Donovan sent to Duda, in which he advised him that the insurance representative would be in Adams on the Tuesday following October 30 to get Duda to go to Springfield, and in his letter Mr. Donovan stated that if he did not go to Springfield on Tuesday, Duda stood a good chance of having a portion of his compensation cut off. In spite of this Duda refused to go. There was no definite offer, so far as Donovan himself knew, of a specific position being offered.

Dr. Walter Desrochers testified that while the arm would be surgically well within two or three months after the accident, it would not functionate properly, and he would not advise going

back to work at that time because it would arrest the progress of the healing; that for a number of months after the arm was surgically well there was a congestion there, due in part to the attempt of the blood vessels to find new avenues through which to circulate. He saw the arm in the latter part of the summer and was surprised to find it doing as well as it did. So far as outward appearances went, it looked about as well then as it does now. Upon an examination of the arm made at the hearing the man evidenced considerable pain under pressure. This would follow any pressure put on it, such as the strapping on of an artificial hand, but the tenderness would go away after use, and this would have been true several months before. With an artificial hand, the doctor felt that this man could do some light work. The man was not robust. He lost blood and suffered seriously from shock. He is not robust to-day, but is in a much better physical condition than he was in the summer time, and there was no reason why he should not have undertaken some light work several months ago. He would suffer pain in that arm whenever he put on an artificial hand, and that would be true whether it was this year or next year. There was no reason why he was not able to wear an artificial hand in the summer time.

Nelson A. Batchelder, of the Berkshire Cotton Manufacturing Company, testified that the insurance company, through its investigator, had taken up the matter of giving this man employment; that he had several times sent word to this man that he had work for him which he could do in his crippled condition; that the man never reported for work, and although on at least three specific occasions he was asked to come to work, they had never heard from him.

We find, therefore, that Duda unreasonably refused to place himself in a position where, without question, he would have been able to do light work; that a position had been obtained for him at work such as he could do, and that he refused to accept the same; that the insurance company, while not under any legal obligation to pay for an artificial hand, had agreed to do so, and stood ready at all times to pay the man's expenses to and from his home in order that he might receive such aid and obtain an artificial hand.

We further find that the shutting off of his compensation on Oct. 4, 1914, was justified because of this man's unreasonable conduct. The insurance company still offers to pay for an artificial hand and the expenses connected with getting the hand, and on the testimony of Dr. Desrochers it would take him about two weeks to get used to the hand.

We further find that his compensation should be forfeited from Oct. 4, 1914, until such time as he accepts the offer of the insurance company and secures an artificial hand; that he will then be entitled to two weeks' compensation during the time that he is getting used to the hand, in accordance with the testimony of Dr. Desrochers; and that then he should accept the offer of employment made to him by the Berkshire Cotton Manufacturing Company, when his future status can be determined under the act by the rate of pay which he is given when he returns to work.

We find that the insurance company should pay the balance, if any, of the fifty weeks' specific compensation to which this man is entitled.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

DUDLEY M. HOLMAN.
GEORGE E. MORRIS.
ARTHUR W. SAFFORD.

CASE No. 1338.

STEPHEN LIPKA, *Employee.*
BERKSHIRE HILLS PAPER COMPANY, *Employer.*
MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

DURATION OF INCAPACITY FOR WORK. REASONABLENESS. EMPLOYEE UNREASONABLY REFUSES TO HAVE ARTIFICIAL LIMB FITTED AND FURNISHED BY INSURER. LIGHT WORK WITHIN HIS CAPACITY TO PERFORM AVAILABLE. COMPENSATION FORFEITED DURING PERIOD OF UNREASONABLE REFUSAL.

It appears that the employee received a personal injury which necessitated the amputation of his left leg. The injury occurred on Nov. 14, 1913, and in August of 1914 the insurer made the first offer to furnish an artificial limb and provide light employment. On Aug. 24, 1914, the Industrial Accident Board communicated with the employee, advising him of his duty with respect to the acceptance of such work as he could perform, and warning him that his neglect to accept and endeavor faithfully to perform the work offered might seriously jeopardise his right to compensation. Notwithstanding all efforts to restore him to partial working capacity, the employee steadfastly refused either to accept the artificial limb or the light employment offered.

Held, that the compensation should be forfeited during the period of the employee's unreasonable refusal to accept the artificial limb and light work which he can perform.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Stephen Lipka *v.* Massachusetts Employees Insurance Association, this being case No. 1338 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Arthur W. Safford, representing the employee, and George E. Morris, representing the insurer, heard the parties and their witnesses in the Selectmen's Room, Town Hall, Adams, Mass., on Tuesday, Jan. 12, 1915, at 12 M.

It was agreed that Stephen Lipka, Albert Street, Adams, Mass., on Friday, Nov. 14, 1913, while in the employ of the Berkshire Hills Paper Company, received an injury arising out

of and in the course of his employment which resulted in a compound, comminuted fracture just above the ankle of the left leg. This finally resulted in amputation.

It was agreed that his average weekly wages were $10.50; that he was entitled to fifty weeks' specific compensation, for the loss by severance of the left leg, at the rate of $5.25 a week; and that he was entitled to $5.25 a week for total incapacity during the period that such incapacity existed.

Dr. F. D. Stafford, a surgeon of North Adams, with Dr. A. K. Boom of Adams, performed the operation, and on the testimony of Dr. Stafford who examined the leg on the date of the hearing, which was the first time that he had seen the leg since the man left the hospital, the left leg was in proper condition to have an artificial limb attached to it. While it was true that several little particles of bone had from time to time worked their way out, and one of them had but recently come through, that was a condition which frequently attended amputation and was of a temporary character, and during such time as it was appearing, and for a few days after its removal, the man would not be able to wear the artificial limb; yet those conditions might arise for several years after the amputation. It was his opinion that in six or seven months after the amputation of a limb, such as the one under discussion, it was perfectly proper for a man to use an artificial limb, and that he could do it successfully and without any material discomfort.

Dr. H. B. Holmes of Adams, who had examined Lipka on the date of the hearing as an impartial physician named by the Industrial Accident Board, testified that in his opinion on this particular date it would not be advisable for the man to be fitted to an artificial leg because of the recent exfoliation of a particle of bone, but that this was a temporary matter. He agreed in general with Dr. Stafford that at the expiration of six or seven months after an amputation an artificial limb could be worn and a man would be able to do some work with it.

Dr. Augustus K. Boom of Adams testified that at the time of the injury he was called to attend to Lipka; that he had him removed to the hospital in North Adams where he and Dr. Stafford at first undertook to save the limb. There was a compound, comminuted fracture of the lower left leg just above

the ankle. A day or two afterwards infection set in, and it became evident that it would be impossible to save the leg. Consent to amputation was received, and the leg was amputated at the left thigh at the middle third. Dr. Boom testified further that the man came to him during the early summer complaining of considerable pain, and on examination he found a wound at the base of the stump into which he could put his little finger; that from it was oozing a serous matter which he treated with a solution of carbolic acid and afterwards with gauze and iodoform; that in his opinion this condition was a resultant condition of the amputation, and he stated that at the time the amputation was made there was pus above the part amputated, and it was his opinion that this had gradually worked down until the appearance of this incision which he found in the early summer was the final clearing up of a condition which had been continuous from the date of the accident. His method of treatment was to secure a granulation and thus heal the surface from the bottom up; that in six or eight weeks this particular condition was at an end; that since then several little particles of bone had worked their way out, and this was the condition which he described in an impartial report which he made on Dec. 28, 1914, when he spoke of "a bluish spot on the inner aspect of end of stump about one-quarter inch in diameter which is very sensitive under the slightest pressure, and which is in my opinion a forewarning of another piece of bone wending its way towards the surface." These were conditions which might arise from time to time, but were conditions which would cause local discomfort for a brief space of time.

It appeared in evidence on the testimony of Donald M. Vidler that an offer was made by the Massachusetts Employees Insurance Association in August to advance money to secure an artificial leg, provided he was willing to accept employment suited to his condition, and that he had obtained a promise of work for him with the Berkshire Cotton Manufacturing Company.

It was also in evidence that on Aug. 24, 1914, this fact was made known to Stephen Lipka by letter through the Industrial Accident Board, in which his attention was called to the law

which required him to accept any employment which he could perform, and in which he was asked to notify the insurer and the Berkshire Cotton Manufacturing Company that he would accept the position offered. He was also warned that the neglect to accept and endeavor faithfully to perform the work offered might seriously jeopardize his right to compensation.

Stephen Lipka, the employee, being sworn through an interpreter, testified that the insurance company had offered to provide him with an artificial leg, but that he doubted their good faith because he claimed that they had previously told him that Mr. Harrington, of the Berkshire Hills Paper Company, the place where he was at work when injured, had promised to give him a position, and when he went there Mr. Harrington denied that he had any place for a one-legged man, and he felt that the promise of a position at the Berkshire Cotton Manufacturing Company might result in the same way. He admitted that he had refused to go to Springfield or to do anything about securing an artificial leg, although he knew that the insurance company stood ready to pay for it and would pay his expenses to Springfield and return.

We find, therefore, on the weight of the medical evidence and the surrounding circumstances, that on Sept. 1, 1914, this man would have been able to have returned to work had he accepted the offer made to him in good faith by the Massachusetts Employees Insurance Association to provide him with an artificial limb without expense to himself, and to pay his expenses to and from Springfield while securing the same.

We find further that a position was, as a matter of fact, open to him, and is open to him at the present time, and has been continuously since the 1st of September; that he has acted unreasonably; and that his compensation should be forfeited from September 1 until such time as he accepts the offer of the Massachusetts Employees Insurance Association, which offer still holds good, to provide him with an artificial leg without expense to himself, and the offer of Mr. Batchelder to furnish him employment such as is suitable for a man in his condition whenever he reports to the Berkshire Cotton Manufacturing Company for work.

We further find that he has been paid in full his compensation

for the loss of his leg by severance, and no further payments are due him on this particular account; that his status on his return to work will be fixed under the law by the amount which he receives as compensation at that time; and that no compensation shall be paid to him for the time elapsing between September 1 and the time when he accepts the offer of the insurance company, or until the Industrial Accident Board otherwise orders.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

DUDLEY M. HOLMAN.
GEORGE E. MORRIS.
ARTHUR W. SAFFORD.

CASE NO. 1346.

MARY MCGRATH AND JOHN T. MCGRATH, ALLEGED DEPENDENTS OF MICHAEL F. KELLEY (Deceased), *Employee.*
SIMPLEX PLAYER ACTION COMPANY, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DEATH RESULTS FROM THE INJURY. DEPENDENCY. HALF BROTHER OF EMPLOYEE A PARTIAL DEPENDENT. EMPLOYEE IS A MINOR AND MEMBER OF HALF BROTHER'S FAMILY. CONTRIBUTES NEARLY ALL OF WAGES TO FAMILY FUND. NO DEDUCTION FROM CONTRIBUTION ON ACCOUNT OF VALUE OF EMPLOYEE'S BOARD. COMPENSATION AWARDED CLAIMANT AS PARTIAL DEPENDENT.

It appears that the employee was a minor, aged sixteen, at the time of his death; that the injury which caused his demise arose out of and in the course of his employment; that his average weekly wages were $6; and that he contributed to the family fund the sum of $4.75 during the twelve months preceding the date of the injury. By reason of the breaking up of his own home, through the death of his mother and the habits of the surviving parent, he took up his residence, five years before the injury, with his half brother, the claimant. Three years later he obtained employment and turned over nearly all of his

earnings to the claimant, through his wife. It was claimed that, in accordance with the decision of the court in the Murphy Case, 218 Mass. 278, no deduction should be made for the board of the employee.

Held, that the employee's sister-in-law was a partial dependent.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board finds and decides that the half brother of the employee alone was partially dependent.

Appealed to Supreme Judicial Court.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Mary McGrath and John T. McGrath, alleged dependents of Michael F. Kelley, deceased employee, *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1346 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, John W. Sheehan, representing the employee, and Edwin H. Crandell, representing the insurer, after being duly sworn, heard the parties and their witnesses at City Hall, Worcester, Mass., Tuesday, Jan. 19, 1915, at 10 A.M.

John F. McGrath appeared as counsel for the dependents, and Frank L. Riley as counsel for the insurer.

The deceased employee was a minor, sixteen years of age at the time of his death. The question is whether the claimants were partially dependent upon his earnings.

While at his work on Feb. 17, 1914, as a mill helper he received an injury arising out of and in the course of his employment which caused his death on Feb. 24, 1914. The accident was caused by a board flying out from a circular saw which struck the employee over the right eye, thereby resulting in a fracture of the skull. His average weekly wages at the time of the injury were $6.

His father for some years, up to and at the time of his boy's death, was an intemperate man, using intoxicating liquors excessively, and subject to the habit so that he was not able to support his family. The boy's mother had been ill for many years, had lived necessarily apart from her husband, through lack of support and consequent illness in the City Hospital,

and had died in April, 1909, in said hospital. Owing to these conditions the boy suffered from extreme neglect without necessary food, clothing or shelter, and was then taken care of by Mary McGrath and her husband, becoming a member of their family as if he were their own child. John T. McGrath is a half brother of the deceased, and Mary McGrath, his wife, is the sister-in-law of the deceased.

The deceased, after entering into the family of the claimants, obtained employment in Richardson's Bakery at a weekly wage of $3, and in 1912 obtained another position with the Simplex Player Action Company at a wage of $6 per week. From the time of his entering his brother's family, as aforesaid, he received his parental care in all respects from the claimants, and he was well looked after, as if he were their own child. He referred to the claimant, Mary McGrath, as his mother, and called her so in speaking to her.

The evidence showed and the committee finds that the deceased turned over to the claimant, Mary McGrath, from his earnings, towards her support and that of the family, an average weekly contribution of $4.75, which the claimant used towards the support of herself and family. Her husband, the said John T. McGrath, also paid his wages over to her, which was used by her towards the support of the family. She boarded and clothed the boy from such family resources, also paying him on an average 50 cents a week as spending money.

It was testified by the claimants and the committee finds that since the boy had come into their family the claimants had been enabled by the boy's contribution from his wages to live in somewhat better conditions and circumstances than before, such conditions and circumstances being those of moderate comfort, and that the loss of such contributions from the deceased makes their living more difficult.

The committee finds that the claimant, Mary McGrath, was partially dependent upon the contributions from the earnings of the deceased for her support, and that she is entitled to a weekly compensation from the insurer by reason thereof of the same proportion of $4 per week, which she would have received if she had been totally dependent, as $\frac{\$4.75}{\$6.00}$ bears to said $4,

amounting to $3.17 per week, for a period of three hundred weeks from Feb. 17, 1914, the date of the injury.

DAVID T. DICKINSON.
JOHN W. SHEEHAN.

Edwin H. Crandell dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Wednesday, March 3, 1915, at 2 P.M., and revising the report of the committee of arbitration, finds and decides as follows: —

No new evidence was offered to the Board on review, this decision being based upon the testimony presented to the committee of arbitration.

All the material evidence follows: —

The claim for compensation was filed by John T. McGrath, a half brother of the deceased employee, Michael F. Kelley, Mary McGrath not being a claimant before the committee or Board.

The evidence shows that the employee, Michael F. Kelley, was a minor, sixteen years of age, at the time of his death on Feb. 24, 1914, said death resulting from a personal injury arising out of and in the course of his employment on Feb. 17, 1914. The injury was caused by a board flying out from a circular saw and fracturing the employee's skull. His average weekly wages at the time of the injury were $6.

By reason of the breaking up of his own home, through the death of his mother in 1909, and the intemperate habits of his father, the employee took up his residence in the home of John T. McGrath, his half brother, becoming a member of the latter's family.

The employee, after entering into the family of the claimant, John T. McGrath, obtained employment at a weekly wage of $3, and, in 1912, obtained a position which paid him an average weekly wage of $6. During the year preceding his fatal injury he had contributed an average of $4.75 weekly to the common family fund, through Mary McGrath, the wife of the claimant,

who disbursed the contribution, together with that of her husband, who paid all of his weekly wages to her, for the benefit of all the members of the family. Included in the family were two minor children of the claimant. In receiving the wage contribution of the deceased employee, Mary McGrath was the agent of her husband, the head of the family of which the employee was a member. The employee was furnished clothing, shelter and support, and given an average sum of 50 cents weekly for spending money. There was no understanding or agreement that the contribution by the employee was a payment for board, clothing or shelter. John T. McGrath, the claimant, was partially dependent for support upon the employee, Michael F. Kelley, at the time of the injury, and was the dependent next of kin to said employee.

The Industrial Accident Board finds, upon all the evidence, that the employee, Michael F. Kelley, was a member of the family of the claimant, John T. McGrath; that the said John T. McGrath was the dependent next of kin; that the employee contributed the sum of $4.75 weekly to the claimant, John T. McGrath, during the year preceding the date of the fatal injury; that the claimant, John T. McGrath, was partially dependent for support upon the earnings of the employee, Michael F. Kelley, at the time of the injury; that, in accordance with the decision of the Supreme Judicial Court in the Murphy Case, 218 Mass. 278, there is due the said claimant the payment of a weekly compensation equal to the same proportion of the minimum of $4 per week, which would be due to a person wholly dependent, as $\frac{\$4.75}{\$6.00}$ bears to said minimum, that is, a weekly payment of $3.17 for a period of three hundred weeks from Feb. 17, 1914, the date upon which the injury occurred.

So far as the evidence warrants, the requests for findings hereto attached are dealt with in the findings and decision of the Board, being refused in so far as they are inconsistent with these findings.

The requests for rulings, hereto attached, are refused.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.

Dependents' Requests for Findings.

1. That the Workmen's Compensation Act was a humanitarian legislation, enacted for the purpose of broadening the benefits to industrial employees both from the preventive and compensatory viewpoint, and the act must be construed broadly and with equitable favor to the employee or those claiming under him.

2. That if the words "next of kin," in view of the breadth to be given to the act in its construction, are not to be construed in the restricted sense set out in chapter 133 of the Revised Laws of Massachusetts, John T. McGrath must be found to be of "the next of kin."

3. That if the words "next of kin," in view of the breadth to be given to the act in its construction, are not to be construed in the restricted sense set out in chapter 133 of the Revised Laws of Massachusetts, Mary McGrath must be found to be of "the next of kin."

4. That as the phrasing in the act is "the . . . next of kin," it may well be construed as indicating that the word "next" does not signify a single person, but signifies more than one person; that this well admits the including of not solely and exclusively the one "nearest" in blood to the deceased, but of all those related to the deceased who are actually dependent upon the deceased at the time of the injury, and who are of the same class of kinship.

5. That if John T. McGrath or Mary McGrath or both of them can be included within the meaning of the definition of "dependents," as defined in section 1 of Part V. of the act, the evidence in this case will warrant a finding that both or one of them is a dependent of the deceased.

6. That it must be found that the deceased was a member of John T. McGrath's family, and that Mary McGrath was, as the wife of John T. McGrath, a member of John T. McGrath's family. Hence it follows that they were members of the deceased's family. (Caliendo's Case.)

7. John T. McGrath and Mary McGrath were members of the deceased's family even in the primary meaning given the word "family," which is that the word denotes a collective

body of persons who live in one house and under one head or management. (Dodge *v.* Boston & Prov. R.R. Corp., 154 Mass. 299; The King *v.* Darlington, 4 T. R. 797.)

8. Even if the word "family" is taken in its secondary meaning, where it includes those who are of the same lineage or descended from one common progenitor, John T. McGrath can be found to be of the same family with the deceased. (Dodge *v.* B. & Prov. R.R. Corp., *ante.*)

9. That the word "family" as used in the act has a wider and broader meaning than previously given to it, and it does not even require that the persons included therein shall be under the same roof nor be of the same fireside. (Caliendo's Case.)

10. That a sister-in-law can be a member of a family as well as a daughter-in-law. (Bradlee *v.* Andrews, 137 Mass. at page 55.)

11. That if a sister can be a dependent, a brother can be a dependent. (Caliendo's Case.)

12. That John T. McGrath, though of the half blood with the deceased, stood exactly toward the deceased as if he were of the full blood, and that therefore Mary McGrath stood toward the deceased as though John T. McGrath were of full blood with the deceased.

13. If a sister residing five thousand miles away from the deceased, and in the absence of any evidence even of a negative character to show a future intention to reside with the deceased, can be held to be a member "of the employee's family," then a brother who is under the same roof, of the same fireside and under one management can be held to be "of the employee's family." (Caliendo's Case.)

14. If a sister residing five thousand miles away from the deceased, and in the absence of any evidence even of a negative character to show a future intention to reside with the deceased, can be held to be a member "of the employee's family," then a sister-in-law who is under the same roof, of the same fireside and under one management can be held to be "of the employee's family." (Caliendo's Case.)

15. That to be a dependent, total or partial, it is unnecessary to show that the person alleged to be the dependent was un-

able to support himself, either in whole or in part. (Daniel Murphy's Case.)

16. That an alleged dependent may be found to be a dependent, and yet be easily capable of supporting himself. (Daniel Murphy's Case.)

17. That the evidence that the deceased never spoke of nor was spoken to about payment for board, that there was no fixed sum of payment, no suggestion of paying for a period of loafing after work was resumed, no revenue from the deceased as a roomer or lodger, and that he washed dishes, swept and washed floors, dusted carpets, made beds, ran errands, chopped wood, restrained and guarded two children, assisted in dressing children, addressed and referred to Mary McGrath as "ma" and "mother," looked to John T. McGrath as father and guide, obeyed John T. McGrath and submitted to his reprimanding, his scolding and his restraining, and had exercised over him a control and a care by John T. McGrath and Mary McGrath that was parental, in addition to his wage contribution, abundantly justifies the finding that he was of the family and was a source of dependence.

18. That there was a moral obligation on John T. McGrath and Mary McGrath toward the deceased because of the neglect and exposure which the deceased had suffered, and the fulfilling of this obligation brought them all closer into one family.

19. That there was a consanguineous relation existing between John T. McGrath and the deceased which brought John T. McGrath, the deceased and Mary McGrath closer together in one family.

20. That there was a moral obligation at least, if not a legal one, arising from the promise given by John T. McGrath and Mary McGrath to the mother of the deceased while the mother was on her death bed, to care and watch over the deceased, the fulfillment of which brought the deceased and John T. McGrath and Mary McGrath closer into one family.

21. That the evidence would well support a finding that Mary McGrath received in her own right, both from the deceased and from John T. McGrath, their wage contribution for the united support and maintenance of John T. McGrath, Mary McGrath, the two children of John T. McGrath and

Mary McGrath, and the deceased, or that Mary McGrath received the wage contribution both from the deceased and her husband, John T. McGrath, as the agent of economy and thrift for her husband, John T. McGrath, and that John T. McGrath was *de facto* the principal.

22. That the contribution of the deceased helped maintain the united family. (Daniel Murphy's Case.)

23. That the evidence shows a real dependency by John T. McGrath and Mary McGrath upon the wage contribution of the deceased for the support of their united family.

24. That under what would be clause *d*, if lettered, of section 7 of Part II. of the act the dependency is to be determined "in accordance with the fact, as the fact may be at the time of the injury." The evidence in this case shows not alone by a fair preponderance, as is required, but even beyond a reasonable doubt, which is more than is required, that there was a natural and real dependence, physically and financially, by either John T. McGrath or Mary McGrath or both of them upon the wage contribution of the deceased.

25. That the deceased's wage was $6 per week, his contribution $4.75 per week, and that in instalments throughout the week small amounts were given to him, whose total or aggregate for the week would approximate 50 cents, but that these were gratuitous offerings on the part of John T. McGrath and Mary McGrath, or both, and cannot be included to reduce the amount of contribution from $4.75 to $4.25. (Daniel Murphy's Case.)

26. That the profit on the contribution made by the deceased is not the standard of computation, but the amount of contribution genuinely and in good faith made. (Daniel Murphy's Case.)

27. That it is the actual contribution made systematically and deliberately by the deceased that governs and controls, and the cost of maintenance or "raising" is not to be deducted in the computation, unless the contribution is made as a fraudulent subterfuge. (Daniel Murphy's Case.)

28. That if the deceased's weekly contribution was $4.75, as agreed, and there was a giving back in small portions sums that aggregated 50 cents per week for those odds and ends for

which a boy of the deceased's habits and environment would need such an amount, it ought not to be deducted from the $4.75 any more than if said total or aggregate of 50 cents per week, and scattered over each week, had not actually been given to the deceased in hand, but he had been given the benefit of said aggregate of 50 cents by John T. McGrath's or Mary McGrath's physically taking him to those places of amusement and physically buying for him those youthful wants on which said 50 cents were spent by him, the deceased.

29. That the father, James Kelley, could not be found to be a dependent, as he had sought to release to John T. McGrath the control and care of the deceased by his acquiesence that John T. McGrath should procure a school certificate permitting the deceased to labor, by his advice to the deceased to remain with McGrath, by his suggestion to McGrath to care for the boy, by his gross and criminal neglect of the deceased, and as the only money the father ever received from the boy came from an irregular and infrequent dunning of the deceased for small change for purposes of drink.

30. That on all the evidence there is a sufficiency of evidence to support the contention that there was a dependency upon the deceased, and that John T. McGrath or Mary McGrath or both were dependents thereon.

JOHN F. MCGRATH.

Requests for Rulings filed by the Insurer.

1. On the report of the board of arbitration Mary McGrath, the alleged dependent, is not entitled to compensation.

2. Mary McGrath was not the next of kin of the deceased, Michael F. Kelley.

3. Mary McGrath was not a member of the family of the deceased Michael F. Kelley.

4. There is no evidence that would justify a finding that John T. McGrath was a dependent within the meaning of the Compensation Act.

5. On the report of the board of arbitration the amount of compensation paid, in the event a decree for payment of compensation is justified, on the evidence should in no event be more than $\frac{425}{600}$ of $4.

CHARLES C. MILTON.

CASE No. 1350.

WILLIAM J. BRILEY, *Employee.*
D. WHITING & SONS, *Employer.*
LONDON GUARANTEE AND ACCIDENT COMPANY, LTD., *Insurer.*

ARISING OUT OF THE EMPLOYMENT. QUESTION OF ADDED DANGER BY REASON OF ACT OF EMPLOYEE. CONFLICTING EVIDENCE AS TO PURPOSE IN PROCEEDING TO RAILROAD TRACK. EMPLOYEE STATES THAT HE WAS ENGAGED IN PICKING UP CAN COVERS. EVIDENCE GIVEN CREDENCE. COMPENSATION AWARDED.

The employee received a personal injury by reason of having his left foot run over by a railroad engine while he was picking up milk can covers which had become scattered about the railroad track in the yard of his place of employment. His foot was caught in a frog in the track and an engine ran over and severed it at the ankle. A question as to the veracity of the employee's evidence was raised by the production of a statement attributing the presence of the latter on the railroad track to another cause.

Held, that the employee was entitled to compensation.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of William J. Briley *v.* London Guarantee and Accident Company, Ltd., this being case No. 1350 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, N. P. Sipprelle, 6 Beacon Street, Boston, Mass., representing the insurer, and Ralph Woodworth, Pemberton Building, Boston, Mass., representing the employee, heard the parties and their witnesses in the Hearing Room of the Industrial Accident Board, Monday, Jan. 18, 1915, at 2 P.M.

H. S. Avery appeared as counsel for the insurer, and A. S. Apsey appeared for the employee.

Arbitration was requested by the insurer, claiming that the injury did not arise out of and in the course of Briley's employment.

William J. Briley, 38 May Street, Everett, the injured employee, was employed in the can-washing room, at an average weekly wage of $12, by D. Whiting & Sons, 570 Rutherford Avenue, Boston, Mass., who are insured under the provisions of the act with the London Guarantee and Accident Company, Ltd. It was alleged by the employee that on Nov. 4, 1914, while picking up milk jug covers which had become scattered about the tracks in the yard of said plant, his foot became caught in a frog in the track, when the freight train backed in on him, taking his left foot off above the ankle.

Dr. William J. Brickley, resident surgeon at the Haymarket Square Relief Station, testified that on November 4 last William J. Briley was brought to said hospital in an ambulance. He examined Briley and found that he had suffered a traumatic amputation of the left lower leg. When he was first brought in he was in a semiconscious condition, did not reply when spoken to, and after repeated examinations he determined that Briley was mentally affected. Speech was not well articulated; had marked arteriosclerosis, dorsal kyphosis, or senile hump in back; old left and right inguinal hernias. The lower ends of the bones in left lower leg were badly crushed. Operation was advised, and requested by wife of patient. Operated with Drs. Howe and Andrews and took off just enough bone so that flesh-flaps could be made. Recovery was slow. Under date of November 11 he was transferred to the Boston City Hospital. Mental condition was then somewhat improved. Did not attend Briley after the 11th.

William J. Doyle, foreman in charge at the time of the injury to Briley, testified that he had been in the employ of D. Whiting & Sons for a period of about twenty years. It was his duty to see to the unloading of the cars, making them up, and sending them out with the milk. This is known as platform work. Should estimate that platform is about 400 feet long, and cars come in on either side (sketch of platform was offered in evidence by Mr. Avery). Width of platform is from 30 to 40 feet. Briley had never been in his employ, although he had known him for six or seven years, and did not know that he had been injured until he saw him, about a quarter of 5, at the end of the platform, sitting, apparently,

on one of the trucks of D. Whiting & Sons. Mr. White came back and told him that Briley was down there with his left foot cut off. An ambulance was sent for at once. The yard master of the Boston & Maine was notified of the injury, and the engine which was shifting came in on the spur track. Briley was placed on a stretcher and taken to the North Station. He had not seen him since until the day of the hearing. It was a usual thing for the can covers to become scattered about either side of the platform, and quite as usual for any of the men employed by D. Whiting & Sons to pick them up, although it is quite a bad place for the men to be about.

Charles D. McKay, 185 Shawmut Avenue, Boston, testified that he had been employed by D. Whiting & Sons since the 28th of March, 1914, as foreman of the washroom, and was directly in charge of Briley. First learned of the injury to Briley at about ten minutes before 5, from somebody in the can room. Briley was found at the further end of the platform. He had seen him about fifteen minutes previous, just before the shutting down of the can-washing machine. There are certain cans which are not washed by machinery, and after the machine is shut down these cans are washed by hand. Briley was in the employ of D. Whiting & Sons before McKay had entered their employ as foreman of the washroom, and appeared to know the routine work. He had no talk with Briley from the time the machine had been shut down and the time of the accident, and had given him no orders. Had had no talk with him since, and knew nothing further about the accident. It was customary for the men, at the close of their day's work, to go upstairs to the washroom to clean up, and sometimes to smoke. This was only a short distance from the can room, — probably 30 or 40 feet, and the can-room door is the third door from where the platform ends. During his term of work for the Whiting Company Briley had worked quite regularly, occasionally taking a day off, with the permission of Mr. Sullivan who was in charge. In his absence, permission to remain away from work would have been asked of Mr. Doherty.

John Flynn, 24 Middlesex Street, Charlestown, testified that

he had been in the employ of D. Whiting & Sons for about eleven and a half years, and at the time of the injury to Briley he was employed in the can room. He had worked within three or four feet of Briley the whole afternoon of the accident, and knew nothing about the accident until 5.20 or thereabouts. He noticed that when Briley went out the door he turned to the left, towards the platform. Work was not finished, — about 130 cans still remained to be washed by hand. Saw Briley after he was hurt, at the end of the platform. Had no talk with him, and has not seen him since.

Alexander A. White, 50½ Florence Street, Somerville, testified that he was employed by D. Whiting & Sons, doing platform work, — loading and unloading cars, — and working under William J. Doyle. He saw Briley at about 5.20 o'clock, after he had been injured, down at the end of the platform, and about 10 feet from the steps, sitting on the platform truck. He and Mr. Doyle went to the shipping office and telephoned for an ambulance. He asked Mr. Briley no questions and has not seen him since. On the day of the injury it had grown dark about 4.30; ordinarily there are can covers scattered about the tracks, and it is the custom of the men to get down there and pick them up, although it is sometimes dangerous to do so.

Robert A. Chisholm, 70 Dell Street, East Somerville, another employee of D. Whiting & Sons, testified that he was blacksmith for said company. Just after he left his work to go home he went up to the platform, as he did many nights, and from there saw Briley on the head end of the engine. He seemed to be on his hands and knees, and it was just dusk, so that he was distinguishable. On this particular day of the injury he thought the cars had been shifted a little while before he saw Briley. There was a wood bar on the front end of the engine, and it was upon this bar that Briley appeared to be holding. The engine was facing the cars. It runs in there frontwards and goes out backwards. He spoke to the brakeman and conductor, but Briley made no sound, and he did not know until the following day that he had met with an injury.

Manuel Lewis, 13 Belmont Street, Charlestown, an employee of D. Whiting & Sons, testified that he was employed in the

receiving room. He saw Briley for the last time the day of the injury, at about 12.30 P.M. He was upstairs in the washroom when he heard somebody speak of the injury to Briley, but when he came downstairs Briley had been taken to the hospital. He had not seen Briley since.

William E. Briley, the injured employee, testified that he had been in the employ of D. Whiting & Sons for the past ten years. During the afternoon of the injury he had suffered from dizzy headache and sickness of the stomach, due, he thought, to the odor of the milk and steam. Shortly after 4.30 he had gone in search of the superintendent to obtain permission to go home, and also to remain away the next day unless he was feeling better. He walked out on to the platform, and under the electric light noticed the tops of several milk cans about the tracks. It was to pick these up that he had gotten down on to the tracks, and while walking along his foot became caught in a frog, from which it was impossible for him to extricate it. When he saw the oncoming engine he had leaned against the platform to save his life, and had suffered the loss of his left foot above the ankle.

The following statement was introduced by the insurer. The inspector who obtained it was not present at the hearing, but it was agreed by counsel for both parties that if he were present he would testify that the statement was obtained from the injured man in the presence of, and witnessed by, his wife.

Nov. 14, 1914.

My name is William J. Briley, and on the day I got hurt at D. Whiting & Sons, Charlestown, I went out of the building and down on the railroad track to make water, and a locomotive and one car was coming on one track and a train on another. I only heard one and stepped out of the way of it, and was hit by the other and my left foot was cut off. I was in a hurry to get ready to go home, and there were a good many in the toilet room.

WILLIAM J. BRILFY.

Witness:
MARY J. BRILEY.

Mary J. Briley, wife of the injured man, upon being shown the statement introduced by the insurer, denied that it was the paper which was read to her, although she admitted that

it looked like her signature which was signed to the statement. She understood that the paper contained a statement in relation to her husband's clothing, which was at the hospital, rather than a statement concerning his injury. She could not tell whether it was a representative of the insurance company, or one of the doctors, who handed her the paper for signature. She had not worn her glasses, and could not read without them, and it was for this reason that the paper was read to her.

The injured man was hard of hearing, and it was difficult for him to understand questions. He also had a very pronounced impediment in speech, and his words were hardly distinguishable.

Upon all the evidence the committee of arbitration finds that William J. Briley received an injury arising out of and in the course of his employment, and that said William J. Briley is entitled to compensation at the rate of two-thirds of his average weekly wage of $12, or $8 weekly, while he remains incapacitated for work as a result of said injury, not exceeding, however, a period of five hundred weeks; he is further entitled to the specific compensation provided by section 11, Part II. (*b*) of the act, at the same rate, for a period of fifty weeks.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

JOSEPH A. PARKS.
RALPH WOODWORTH.
N. P. SIPPRELLE.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties in the Hearing Room, New Albion Building, Boston, Mass., on Thursday, Feb. 25, 1915,

and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that the employee, William J. Briley, received a personal injury arising out of and in the course of his employment, by reason of having his left foot run over by a railroad engine on Nov. 4, 1914. The employee had been engaged in picking up can covers which had become scattered about the railroad track in the yard of his place of employment. His foot was caught in a frog in the track, and an engine ran over and severed it above the ankle. It was customary for employees, despite the danger thereby incurred, to get down on the track, pick up can covers and place them on the platform adjacent to said track.

A statement was introduced at the hearing before the committee, as signed by the employee, to the effect that he had stepped on to the track for the purpose of easing nature, and that the train had come down upon him. The inspector for the insurer, who obtained this statement, was not present at the hearing, and counsel for the employee agreed that he would testify that he had obtained this statement if he were in attendance. The employee, Briley, and his wife, who was present at the time of the interview between the insurer's inspector and her husband, both denied that the statement attributed to Briley had been made, and said that they understood that the paper was signed in order to obtain Briley's clothes from the Hood company. The employee and his wife both denied the truth of the statement in its entirety.

The Board finds, upon all the evidence, that the employee, William J. Briley, received a personal injury arising out of and in the course of his employment on Nov. 4, 1914; that he is entitled to the payment of a weekly compensation of $8, dating from Nov. 18, 1914, and continuing during his total incapacity for work, in accordance with the provisions of the statute; and that he is entitled, also, to additional

compensation on account of the specific injury received, for a period of fifty weeks from the date of the injury, at the rate of $8 a week.

FRANK J. DONAHUE.
DAVID T. DICKINSON.
DUDLEY M. HOLMAN.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1353.

DANIEL McLEOD, *Employee.*
H. V. HILDRETH, *Employer.*
CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

AVERAGE WEEKLY WAGES. UNUSUAL CASE UNDER MEDICAL PROVISION. EMPLOYEE RECEIVES SPECIFIED SUM PER HOUR FOR CERTAIN NUMBER OF HOURS WEEKLY. PRODUCT OF TWO AVERAGE WAGE. RECOMMENDATION OF COMMITTEE THAT FEE FOR FURTHER MEDICAL SERVICES BE ALLOWED ADOPTED BY THE BOARD.

Two questions were involved in this case, — the correct average weekly wages of the employee, and his right to an allowance for necessary medical attendance subsequent to the first two weeks after the injury. It appears that the employee received 26 cents per hour during a normal working week of forty-five hours, and that his normal earnings per week were $11.70. The injury required the services of an eye specialist for a certain period of time, the bill for such services subsequent to the first two weeks after the injury being $99.

Held, that the employee's average weekly wage was $11.70; recommended that the Board allow the bill of the physician for the period stated.

Decision. — The Industrial Accident Board adopts the recommendation of the committee of arbitration and orders the payment of the bill of the physician, in amount $99.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Daniel McLeod *v.* Contractors Mutual Liability Insurance Company, this being case No. 1353 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, L. J. Ellinwood of 31 State Street, Boston, Mass., representing the insurer, and Samuel Weinberger of 188 Chelsea Street, East Boston, Mass., representing the employee, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, New Albion Building, Boston, Mass., Tuesday, Feb. 2, 1915, at 10.30 A.M., and Saturday, Feb. 13, 1915, at 9.30 A.M.

William Hirsh appeared as counsel for the employee, and J. W. Bond appeared as counsel for the insurer.

The question was as to the average weekly wages of the employee, and the payment of reasonable medical services beyond the first two weeks after the incapacity. It was agreed that the employee, Daniel McLeod, while employed by H. V. Hildreth at Westford, Mass., on Oct. 6, 1914, received an injury arising out of and in the course of his employment, and that reasonable medical and hospital services were furnished by the insurer for the first two weeks after the injury.

The material evidence was as follows: —

The employee, while working as a quarryman on Oct. 6, was injured by a piece of granite which he was cutting flying up and striking him in the eye. The employee had been in the employ of Hildreth for seven days, and received 26 cents an hour in wages, a working week consisting of forty-five hours.

Evidence as to McLeod's weekly earnings was submitted by the insurer and employee in the form of communications from his employers within the twelve months preceding the injury. It appeared that he had no employment in the service of others prior to April 15, 1914, before that time being engaged in granite cutting on his own account. From April 15 to May 30 he was employed by the Plymouth Seam Face Granite Company at $3.25 a day; from June 11 to June 20, by the Blue Hill Granite Company at $20 a week, temporarily acting in the place of an injured foreman; from June 30 to September 25 he was employed by L. P. Palmer & Sons at Westford, working in that period during most of the time as a quarryman at 27 cents an hour, and for thirty-seven hours

during the entire period of his employment there as a smithy at 41 cents an hour. The employee testified that the quarrymen's wages varied from 20 to 30 cents an hour, some employers paying 20, some 26, some 27 and some 28, while at Quincy, Mass., the rate was 30 cents.

The facts in regard to his medical attendance are as follows: —

On Oct. 7 he went to the Massachusetts Charitable Eye and Ear Infirmary and remained until the 17th. On October 19 he went to Dr. George H. Ryder, an eye specialist, who informed him that unless his eye was removed he might lose the sight of the other eye. He went to Dr. Myles Standish for advice. The latter told him the best thing to do would be to have the eye removed, and advised that he have an X-ray made. The X-ray was taken on Saturday, Oct. 24, and the following Wednesday Dr. Ryder removed the eye. The latter rendered a bill for $152, covering his services from Oct. 21 to Jan. 27, 1915, — 14 house and office visits and the operation, his charge for the latter and the help of an assistant being $105.

The committee believes this to be an unusual case in the meaning of section 5, Part II. of the Workmen's Compensation Act, and recommends to the Board that the insurer be ordered to pay for the services of Dr. Ryder to the amount of $99, such an amount being in the opinion of the committee reasonable for an industrial case. The committee finds that the average weekly wages of the employee were $11.70 a week, forty-five hours at 26 cents an hour, and that he is entitled to compensation at the rate of $7.80 a week, such compensation to date from the fifteenth day after the injury, and to continue during his total incapacity for work; and further finds that the employee is entitled, under clause *b* of section 11, Part II. of the act, to additional compensation of $7.80 a week for a period of fifty weeks from the date of the injury for the loss of his eye.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if

the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

FRANK J. DONAHUE.
L. J. ELLINWOOD.
SAMUEL WEINBERGER.

The Industrial Accident Board adopts the recommendation of the committee of arbitration in the above case in regard to the payment for reasonable medical service beyond the first two weeks after incapacity, and orders the payment of $99 by the insurer to Dr. George H. Ryder.

ROBERT E. GRANDFIELD,
Secretary.

FEB. 17, 1915.

CASE NO. 1357.

JOHN C. DAKIN, *Employee.*
ROCKY NECK MARINE RAILWAY COMPANY, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

ARISING OUT OF THE EMPLOYMENT. PHYSICAL AND NERVOUS CONDITION AFFECTED BY LOSS OF VISION RESULTING FROM INJURY. EMPLOYEE TOTALLY INCAPACITATED. COMPENSATION AWARDED ON THAT BASIS.

The evidence showed that the employee, a man of sixty-six years, received a personal injury arising out of the employment, which caused the loss of vision in the left eye. He was working as a ship's carpenter when a piece of the "spike-set" which he had hit with a "pin maul" flew up and entered his left eye. As a result of the injury it became necessary to remove the eye. The injury occurred on May 8, 1914, and the insurer discontinued incapacity compensation after Oct. 16, 1914. The additional compensation due for the loss of vision had been continued. It appeared in evidence that the employee was suffering from the nervous and physical effects of the injury, and was unable to obtain any work which he could perform as a result thereof.

Held, that the employee was totally incapacitated for work.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John C. Dakin *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1357 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Elliott C. Rogers, representing the employee, and W. Lloyd Allen, representing the insurer, after being duly sworn, heard the parties and their witnesses at City Hall, Gloucester, Mass., Tuesday, May 18, 1915, at 11 A.M.

John M. Morrison appeared as counsel for the insurer, and Frederick H. Tarr appeared for the employee.

This employee, a man sixty-six years of age, on May 8, 1914, received an injury arising out of and in the course of his employment. His average weekly wages were $18. His work was that of a ship carpenter and worker on ship ways, and he was working at the time at setting a spike in a hole under the planking of a steamer and hitting the spike-set with a pin maul, when a piece of the spike-set flew up and hit him in his left eye. As a result of this accident it was necessary to have his left eye enucleated. The insurer has paid fifty weeks' compensation at the rate of $9 a week for the loss of the eye, and disability benefits have been paid up to and including Oct. 16, 1914, at which time compensation was stopped by the insurer. The question raised was whether or not incapacity continued after Oct. 16, 1914.

John C. Dakin testified substantially as follows: That he had worked for his employer for about eighteen years off and on; that he had not been a ship carpenter all his life, but had been engaged in deep-sea fishing at one time. When there was no hauling of vessels on ways for him to do he would help put rails on some of the vessels. His health had been good, with the exception of an attack of pleurisy which he had about four years ago. His accident occurred at 8 o'clock in the morning, and he continued at his work until 11, when

he was obliged to quit. He went home and consulted Dr. Cook in the afternoon. His eye was examined, but the piece of steel was so deeply set that he was sent to the Eye and Ear Infirmary on Saturday morning, where his eye was removed and a piece of steel was found about one-eighth of an inch square. He had erysipelas in his eye after the accident, before it was removed, but had had no trouble with his eyes before the accident. He did very little reading in the evening, but read the newspapers sometimes with the aid of glasses. He had been using glasses in the evening to read, two or three years before his injury. He was in the hospital five weeks. He had consulted with various physicians and oculists in regard to his eye since he had left the hospital. He stated to the committee that he could see but little with his eye, and he thought he could not see well enough to work; that at times a blur came over his eye. He had tried to split some wood since his accident, but met with some difficulty in doing this; he had also endeavored to drive some nails but was unable to hit them in the desired place. When he walked about he was obliged to watch his feet to see where he was going. He had fallen downstairs in his house about three months ago because of his inability to see correctly. At another time he was standing on a ferry boat landing and put his hand out, thinking that his fingers were on the rail, but he had miscalculated, and if a fellow passenger had not offered him assistance he would have fallen overboard. He could see no better now than he could before he had the glasses. He thought he could see better on a bright day than on a dull day, — that he could see objects at a distance better. At the present time things seemed to be dark and cloudy. He had a glass eye, but he hadn't had it in for six weeks because it would not remain in its place, and the eye socket was sore and inflamed. He could not see to read at the present time, as he was unable to tell a letter. He didn't know of any kind of work he was capable of performing now. The only glasses he had before the accident were a pair he had purchased from a man about fourteen years ago; but he never used these in the daytime. He noticed at the end of this time that print didn't appear as bright to him, but he was getting older and thought

that one was obliged to change his glasses at times. Dr. Payne told him that his eye might be weak, but he would give him glasses, and that these would bring his eye around all right in time. He was afraid to work at his former employment fearing he would fall off the stagings. He was afraid to go on to the ways. He thought a man was not wanted unless he could go on the ways. He would meet with difficulty in performing any kind of work because of his inability to see.

D. Sherman Tarr testified substantially as follows: That he was general manager of the Rocky Neck Marine Railway Company, and that the employee had been with them for the last eleven years, if not longer; that he considered him a good, plain carpenter, and he always showed a good spirit. He thought there was no position that a man with defective eyesight could fill satisfactorily; that in the kind of work the employee had been performing a man was obliged to see well, so that all the men could work simultaneously. The witness had asked him how he felt, occasionally, when he came down to the pier, but he never said he wanted to go to work. He thought he had been down once or twice a month, although he would not see him every time he came. He stated that if he could do the work, the position would be ready for him, and that he felt friendly disposed towards him. He did not consider that the men who could see were in a hazardous position when they worked on the staging.

Leonard Burnham testified substantially as follows: That he was overseer and did the hiring of the men, and also watched them to see that they attended to their work properly. He considered the employee a good, faithful man, and one on whom he always placed much dependence. He had seen him walking around since his injury, and thought he couldn't see very well; he had asked him how he was progressing and Dakin replied he couldn't see any better, that his head ached, and he couldn't see to get around. The witness asked him if he felt like work, and he answered that he didn't. He didn't consider him now a very robust man by his general appearance. He appeared to him as though he was rather weak and hardly able to do a man's work since his injury; before this time he seemed strong.

The report of Dr. William J. Daly, who was appointed as the impartial physician to examine the employee, was before the committee, a copy of which follows: —

31 MASSACHUSETTS AVENUE, BOSTON, Oct. 21, 1914.

Industrial Accident Board, Commonwealth of Massachusetts.

DEAR SIRS: — The following is part of my record in the case of John C. Dakin of 136 East Main Street, Gloucester, kindly referred by you to me under section 8, Part III. of the act.

Mr. Dakin has an enucleated orbit on the left side. The lid is tense and shining and shows the results of inflammation. The orbit appears to be normal.

The vision of the remaining eye without a glass is 33 per cent. of normal. With a correcting lens he has 55 per cent. of normal. His near vision is normal.

The diminution of vision in the right eye is due to lenticular change, and in no way connected with his accident.

Yours very respectfully,
WILLIAM J. DALY, M.D.

BOSTON, Dec. 29, 1914.

Industrial Accident Board, Commonwealth of Massachusetts.

DEAR SIRS: — In compliance with your request I wish to state the following in the case of John C. Dakin of 136 East Main Street, Gloucester.

Mr. Dakin sustained an accident on May 6, 1914, whereby, in setting a spike in a hole under the planking of a steamer and hitting the spike-set with a pin maul, a piece of spike-set flew up and hit the vessel and then hit him in his left eye. He was sent to the Eye and Ear Infirmary the next morning. An operation was done, in which the steel was said to have been removed. He was around and about in one week. The eye did not heal, was taken out, and erysipelas is said to have complicated convalescence after enucleation. A glass eye was put in two months after the removal of the eye. He could wear it with comfort up to yesterday. Yesterday he complained that it hurt him.

His chief complaint at present is loss of sight in the right eye — "a scum comes over it, and when I am out in the wind it is worse." He first noticed the sight getting poor since leaving the hospital. There is no pain, and the sight is just about the same as when he first left the hospital.

Enucleated orbit (left).

Vision, right eye, uncorrected, 33 per cent.; corrected, 55 per cent.

The increase in vision, with correction, is due to astigmatism.

The vision for near is the ability to read Jaeger .5 at 33 centimeters readily with his correction.

The upper lid is red and tense looking, as though, possibly, a rebeginning of the erysipelatous condition.

The astigmatism is in no way connected with the accident.

Very truly yours,

WILLIAM J. DALY.

Dr. Alton J. Choate testified substantially as follows: That he had seen the employee once, about a month ago; that he seemed to have an inflamed condition of the eye socket from which the eye had been removed, which resembled a granular condition with a deep red hue. It looked as though it had been quite sore. He prescribed a solution to help the irritation. He stated that the granulation was an exuberation of tissue.

Everett A. Flye, an optometrist, testified substantially as follows: That he had tested the vision of the employee and found he had 20/40, which is about 50 per cent. vision, possibly a little over without glasses; that his vision was 50 per cent. of a normal eye. He prescribed glasses for him then, and his vision with glasses was 20/20 normal. He saw him about three weeks after this again, and he tested better without lenses than he did the first time, which was about 66⅔ vision without glasses. The employee complained of his glasses causing his head to ache or some such similar complaint, so they were reduced a little. He then went to Dr. Payne, and he sent him the prescription. The witness thought a man would become accustomed to glasses with one eye, the vision of which was almost normal, in ten days or two weeks. He couldn't tell whether his eye was normal previous to the accident or not. He stated that each eye makes a separate image of itself; that if one image is cut off, the vision is there just the same, although one might lose a little through the shock, but the vision ordinarily comes back all right. He stated that the serious result of losing one eye was the inability to judge form and distance of objects and their relative position. He thought the reason for the scum appearing over his eye might be due to his circulation, which might be poor at certain times during the day, owing to the shock of the operation or general causes; if this were a fact he would not see clearly.

Dr. Snow F. F. Cook, who examined the employee for the insurance company, testified substantially as follows: That he found a condition of hyperopia when he examined the employee; that he saw no connection between the injury to his left eye and the condition of his right eye, as it was at the present time. He made an examination in September, and with a correcting lens he had ½ vision; he was far-sighted and is to-day. He had not examined him physically and was unable to give an opinion regarding his physical ability to work. He thought that if a person got accustomed, and worked along, one eye would, in time, practically do the work of two eyes. He thought getting accustomed to seeing with one eye depended upon one's age, disposition, character and mentality, but that this might take a long time, considering the employee's age; although the vision itself might be as good with one eye as with two, it would require time for a person who loses one eye to learn to judge form, distance and location with any degree of accuracy. This power to judge form and distance with one eye cannot be acquired for some time, depending on the age, health and disposition of the person. It was possible for the nerve of the well eye to be affected when the other eye was removed; this could be ascertained, if it had progressed far enough, by looking in the back of his good eye. He did not consider he was capable of performing his regular work if it were at all dangerous to work. He stated that it was very rarely that anything would happen to an eye in a person by the removal of the other, but he could see how it might be possible.

The committee finds that this employee has been totally incapacitated for labor, and thereby from obtaining earnings, since the injury and removal of his left eye; that his physical and nervous condition have both been impaired by the injury, and this, together with his age and a weak rallying power, has prevented him from using the remaining eye with sufficient accurateness for vision regarding the location, position and distance of objects to enable him to work and obtain employment, or to resume his former employment with safety to himself and others; that the power in a person to accommodate himself to the use of one eye, after the loss of the other, varies in different individuals, and depends on age,

condition and temperament, and that it is more difficult for this employee than for the average person.

The committee finds that he is entitled to a continuance of his weekly compensation at the rate of $9 per week from Oct. 16, 1914, the date when it was stopped by the insurer, to May 18, 1915, the date of the hearing, and that said compensation shall be further paid weekly during the continuance of said incapacity.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

DAVID T. DICKINSON.
ELLIOTT C. ROGERS.

W. Lloyd Allen dissents.

CASE No. 1359.

OSCAR E. JOHNSON, *Employee.*
UNION STREET RAILWAY COMPANY, *Employer.*
MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. ACCELERATION. PRE-EXISTING DISEASE. POTT'S DISEASE. EMPLOYEE RECEIVES INJURY TO BACK, AND COMPENSATION IS PAID FOR DEFINITE PERIOD. DISEASE DEVELOPS AND COMPENSATION CLAIMED FOR FURTHER PERIOD. INJURY DOES NOT ACCELERATE DISEASE. COMPENSATION NOT AWARDED.

It appears that the employee, twenty-seven years old, received a personal injury by reason of a blow on the back as the result of standing suddenly upright on Aug. 8, 1914. Incapacity compensation was paid to Oct. 9, 1914, at which time the insurer claimed that all incapacity due to the injury had ceased. The medical evidence showed that the blow was not a material contributing factor to the Pott's disease which incapacitated the employee for work, such disease having been in a state of progressive development prior to the injury.

Held, that the employee was not entitled to compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Oscar E. Johnson *v.* Massachusetts Employees Insurance Association, this being case No. 1359 on the files of the Industrial Accident Board, reports as follows: —

The committee, consisting of David T. Dickinson of the Industrial Accident Board, chairman, William O. Hallowell, representing the employee, and Arthur J. Santry, representing the insurer, after being duly sworn, heard the parties and their witnesses at City Hall, New Bedford, Mass., on Friday, April 16, 1915, at 11 A.M., and at a continued hearing at the Hearing Room of the Industrial Accident Board, New Albion Building, Boston, Mass., on Wednesday, May 12, 1915, at 2 P.M. John W. Cronin appeared as counsel for insurer.

This employee, a man twenty-seven years of age, received an injury arising out of and in the course of his employment. His average weekly wages were $14.18 He was working at the time at sweeping up the repair pits, when he raised himself up suddenly and struck his back in the upper lumbar region against a pipe hanger. The insurer has paid compensation at the rate of $7.09 a week up to and including Oct. 9, 1914, at which time it was stopped. The question raised was whether his incapacity had been caused by an injury received in the course of his employment.

Oscar E. Johnson testified substantially as follows: That he was down on his knees sweeping the floor on Aug. 8, 1914, and raised himself up to move, when he struck against a pipe hanger. There were steel pipes in the hanger, and the bottom of the hanger projected down below the pipes. The hanger hung down about 8 or 10 inches. As he was moving, he raised himself right up underneath the hanger and struck the lower part of his back, well over the spine. It hurt him much at the time, but afterwards he could feel no pain. He finished the sweeping, which took about five minutes, and then picked up all the sweepings. He was standing up while performing this latter work. He got injured about 1.30 and worked until

about 4 o'clock. There was not very much work to do Saturday afternoon. He rode home on the street cars. He felt all right Saturday, but he didn't work Sunday, as his wife was ill. He went back to work Monday morning, but he could not stand up on account of the pain in his back. He and a friend went out Saturday night and he told him that his back had commenced to ache; that he just felt it when he went out. This was between 6 and 7 o'clock. He did not notice the pain very much Sunday. He felt pain in his back when he went to work Monday morning. The pain was like something pulling, and it seemed to be in the same place where he was injured. He went to work Monday morning at 7 o'clock and told the fellows that his back was aching. He tried to do his regular work, which was looking over engineer valves and oiling them, but he had difficulty in stepping up on the car. It hurt him to step on the fender of the car. It was a distance of about 16 inches from the floor to the fender, and from the fender up to the step about 3 or 4 inches, and from there to the platform one more step. His back hurt him so much that he could not step up, and he was obliged to quit work. He told Mr. Bennett, the superintendent, that he had a severe pain in his back, and also told Mr. Bonner, who is foreman, and Mr. Fuller. He told the latter that he got hit in the back and had a severe pain; that he wasn't able to work. He thought he was asked a few questions about his accident. He went home after trying to work on the first car Monday. His employer gave him the name of a doctor to consult in regard to his injury, but he thought he lived too far away, so his wife sent for the family doctor, who lived a short distance from their home. The doctor gave him some pills, but the pain did not cease, and then he strapped his back. He removed the strapping and then advised him to go to a hospital to have a plaster jacket put on. He accordingly went to St. Luke's Hospital and remained a little over three weeks the first time. He then came home for a month, during which time he did nothing. He went back to the hospital again, and was a patient of Dr. MacAusland, who removed the cast and advised him to come into the hospital. He remained in the hospital from October 20 to January 17.

He came home and stayed a little over a month and then went back to the hospital again, as the cut in his back hadn't healed up and was discharging. This was in February, and he remained two weeks and two days. A bone was removed from his back, and he came home again in March. He has not performed any work since, although he is feeling better.

Dr. E. St. J. Johnson testified substantially as follows: That he first saw the employee in October, 1914; that his back was then almost healed up following the operation which Dr. MacAusland had performed for this trouble with the spine, which they understood from his story was started by a comparatively trivial injury, and then developed into something which Dr. MacAusland thought was tuberculosis of the vertebræ. In accordance with that he performed the Albee operation. The man did pretty well, but there were two little pieces that did not heal. He attended him in his office and at his home, trying to get these pieces to heal, but they did not. On again conferring with Dr. MacAusland they opened up his back and took out a bone, which was put in in the Albee operation. His back healed up very fast and is practically healed to-day. The bone that was taken out was about 5 inches long, three-quarters inch in width and one-quarter inch thick. In an Albee operation the lamina is sawed out, which is the connection between the top of the vertebræ and the spine. The lamina is sawed out of the diseased vertebræ, if there is any, and also some of the healthy vertebræ, forming a sort of trough in the back. In that trough we place this new piece of bone taken elsewhere from the top. This is sewed down and then the skin and muscles sewed over it. Usually the grafting heals very nicely. Instead of having a diseased bone to support that part of the spine they have a new piece of graft. There is a good deal of reaction about the graft, and you have in place of a spine, which was once weakened by disease or injury, a solid bone, — live bone. The reaction is apt to cause a little limitation of motion, but that varies with the case. He had known cases where there was a good deal of limitation of motion, and there were cases where there had been almost none; this depended on many factors. The graft took all along with the exception of two little ends on

the upper end of the bottom of the graft, where it didn't heal up and was discharged; it might be discharging at the present time if the graft wasn't removed. They hoped there would be enough reaction in the bone when the graft had been placed to solidify the spine. Dr. MacAusland found nothing which he could absolutely prove was tuberculosis, but he said the appearance of the tissues when he saw them was so like tuberculosis that he was going to treat it as a tubercular spine. He would never have removed a part of the bone and put in this graft unless there had been some diseased condition. There was one laboratory test made of the discharge which came from his back, with the idea of finding tubercular bacilli. None was found, but that would not exclude tuberculosis at all. If they had found them then they could have been absolutely certain the process was tuberculosis. The X-ray was taken from two points of view, — first, to see the amount of deformity in the spine, and second to try and diagnose the kind of disease there was in the back. He saw the X-ray man and was told that he didn't show enough to make any statement one way or the other. He couldn't make the diagnosis of tuberculosis, nor could he say there wasn't any, but he said there was a process going on, — an inflammatory reaction. Sometimes the bacilli in tuberculosis processes, especially in the bone, are walled up in little cavities. One may have a hole through the callus and tubercular bacilli coming out. From the evidence he had and from Dr. MacAusland's statement he was of the opinion that it was tuberculosis. There are a number of different infections that might be the cause of this back; any infection may cause the breaking down of the bone. A sprain in the back might wake up any diseased process which was lurking in that region at the time, even a sprain which a man would not ordinarily notice. A crushing of the tissues and injury to the circulation would be more likely to give any diseased process there a chance to spread out. Ordinarily, the abscess in a man with tuberculosis of the spine is quite slow in its development. This depends upon the individual one has to deal with. A trivial injury might hasten a rather extensive process which had been held in position up to that time by the man's constitution

and his mental ability to keep at his work. He understood that the abscess was in the tissue, and there must have been some bone eaten away. A trivial injury does not generally form an abscess, but he thought it might excite a thing which had almost gone on to abscess formation and which was being held by the strength and resistance of the tissues.

James McQuarry testified substantially as follows: That he was shop foreman, and that the employee had made some complaints to him some time after the last injury; that he heard him complain of his back or rather his kidneys; that this was some time during the winter of 1913–14. He thought he said his back was sore; he questioned him about being away from his work. On the Monday morning that he came into his office to ring out, he said his back had gone back on him again and that his kidneys were in bad shape. This was about August 10. He was a man who did his work well, and he was not out very much. He had been working about four years. He thought he was looking yellow and pale, and that this had been coming on for six or nine months. The employee had made the remark more than once that his back was weak, — his kidneys, — and he made this remark once before August.

George H. Bonner testified substantially as follows: That he was foreman on the car, and that the employee had made a complaint to him before August, 1914. It was customary for the foreman to go around and pass the time of day with the men. The employee, previous to the time he was out, had complained of his back trouble, — general running down. The witness thought he probably said, "How are you feeling?" and that he answered, "I don't feel right." He thought this was two or three weeks previous to the time he heard he was out after getting hurt. He knew he was out that Sunday, but he did not know until the middle of the week what the cause was. It was two weeks before this that he talked about his back, saying he was not feeling well, his head was wrong, his back ached, his kidneys troubled him.

Dr. M. J. Marsden testified substantially as follows: That he saw the employee on August 14, and that he said he had been working in the pit and hurt himself against the side of the pit. There were no abrasions there or any other signs, and he

thought at the time it was possible that there was only a bruise. He gave him something to rub on and saw him again the next day. He was no better, so he strapped him up and left this on for two days. At the end of this time he wasn't improved, so he examined him and found this buckling in the spinal column and abscess. This was four days after the first treatment on the 18th. It was as large as a cocoanut, although it did not extend out from the skin, but by palpation and percussion he could tell it was as large as a cocoanut. The abscess with the buckling was this size. He was of the opinion that from a simple injury of this kind no man would look for a tubercular spine in that length of time. After he did not respond to the usual treatment he began to look into it more carefully on the fourth day and found this mass. It was not very apparent until he made a thorough examination. He thought that one would not look for an abscess around the spinal column if a man came in reporting a sprain. The line of vertebræ went off to one side, which made it apparent there was something wrong there. The swelling must have been there before he noticed it. He considered this was a tubercular spine, — tubercular abscess; the abscess would cover up any lump of the bone. When he felt along the spine, instead of getting a straight line, he came to a place where the disease was and found a buckle; tuberculosis is the cause of this buckle. The bone must have been decayed for some time to get that amount of abscess and destruction of bone. He thought that no medical man would ever look for that amount of destruction between the time of the accident and the abscess. The process was going on for many weeks. There was no case on record where there had been so quick a destruction of bone and tissue in so short an experience of time. He remembered that the employee had complained of having a cold; this was the only thing he could remember. He had seen him off and on, and he looked to him as if he had been going down hill a little while previous. He did not remember of his complaining about his back.

Dr. Andrew R. MacAusland testified at the second hearing substantially as follows: That the impression he had at the time he performed the operation on the employee was that

he was a man who previously had considered himself in good health at a very short time before receiving the injury, which he described as not severe, but after a day or two it began to trouble him in the back, so that he immediately consulted a physician; that the physician at that time noted a swelling. When he came to the hospital he had a fluctuating abscess. His impression was that he had had a previous tubercular disease in his spine. He had had no symptoms previous to the injury, and he considered this a quiescent process, one that had gone on many years before. It seemed to him that the abscess must have been there probably longer than the injury. The employee had told him that he had twisted his back badly. At the time he operated the abscess had decreased in size and there was no pus. The abscess was of sufficient size, so that if the man stood up there would be a very definite swelling. He found a cavity when he operated, where the two surfaces had fallen together and penetrated through the edge of this; that the normal tissue was above this; that he then went through the very soft tissue and then through the normal tissue again. The deformity was not very sharp, but it was also a little against an acute abscess. He considered it a rather fortunate thing that he had the abscess called to his attention, because if he had gone along six months longer slowly developing the deformity he would have presented a more difficult abscess than the slight deformity he had. He was given the impression that he struck somewhere on his shoulder and was not injured at the point of the disease. He thought the abscess was existent some months before the injury; that from the size of the deformity it would indicate there was an abscess process before August 8, and this would tend to indicate that there was a disease before August 8.

The report of Dr. P. H. O'Connor, who was appointed as impartial physician by the Industrial Accident Board, was before the committee, a copy of which follows: —

NEW BEDFORD, MASS., Oct. 16, 1914.

Industrial Accident Board, R. E. GRANDFIELD, *Secretary, Boston, Mass.*
Oscar E. Johnson, Union Street Railway Company.

DEAR SIR: —

Oscar E. Johnson: Age 27.
Residence: 289 Davis Street.
Occupation: Truckman.
Attending physician: Dr. Marsden.
Date of accident: Aug. 8, 1914.
Date of examination: Oct. 16, 1914.

Nature of Accident. — Says he was struck in back, while at his work, by a support which served to hold up steam pipes. Complained then of pain in back, but did not consult Dr. Marsden until Aug. 12, 1914. Back was then strapped; about August 20 strapping was removed and a bunch was noticed in his back for the first time; advised to go to hospital. Entered St. Luke's August 26. Remained there about four weeks.

Examination. — Patient is now wearing a plaster jacket. A kyphos (knuckle) is observed in the region of the first and second lumbar vertebræ. No tenderness on palpation, no pressure symptoms. Forward bending is markedly limited in whole lumbar region. Left lateral bending markedly limited. Right lateral bending is limited but to a lesser extent.

Opinion. — Lesion in back unquestionably of tubercular nature (Pott's disease). Taking into consideration that this man was to all outward signs apparently healthy, also that he had no kyphos (knuckle) in back when strapped by his physician, one would be led to think that this injury was the exciting or primary factor in this disease process; it is possible that a Potts could develop acutely following an injury, and that is undoubtedly what has happened in this case.

Sincerely yours,
P. H. O'CONNOR.

Dr. Charles F. Painter, at the second hearing, testified substantially as follows: That he had examined the records of the hospital in this case. He thought that an injury to be a contributory cause in exciting a latent disease of this character or starting it up from the very outside had to be of considerable violence; that it would have to be of great violence to cause an actual injury deep down where the trouble was; that the size of the vertebræ was considerable. The diseased part is 4 inches below the surface, then comes the body of the vertebræ itself, the place in which the disease originates. He stated that about 30 per cent. of abscesses come to the surface

and the rest of them are absorbed. He could conceive where a blow might be a contributing factor, but he did not consider the blow was of sufficient magnitude in this case.

The committee finds on the weight of the above evidence that the claimant's incapacity for work is due to a condition of tuberculosis of the spine, known as Pott's disease, and that this disease was in a course of progressive development, including an abscess resulting from the disintegration of bone in the spine, on and before Aug. 8, 1914; that the slight bump with which the employee struck his back when he partly arose on his knees when under the platform at his work on August 8 did not materially accelerate or aggravate the condition or progress of the disease; and that his subsequent incapacity and surgical operation, by reason of which this claim for compensation is brought, had therefore no causal connection with his employment. The committee finds that the insurer is, therefore, not liable to compensation.

DAVID T. DICKINSON.
WILLIAM O. HALLOWELL.
ARTHUR J. SANTRY.

CASE NO. 1367.

FLORENCE M. NEWMAN, WIDOW OF EDWIN C. NEWMAN, *Employee.*
STONE AND WEBSTER ENGINEERING CORPORATION, *Employer.*
NEW ENGLAND CASUALTY COMPANY, *Insurer.*

DEPENDENCY. LIVING APART FOR JUSTIFIABLE CAUSE. EMPLOYEE FAILS TO PROVIDE A SUITABLE HOME FOR FAMILY. WIDOW CONCLUSIVELY PRESUMED TO BE WHOLLY DEPENDENT. COMPENSATION AWARDED.

It appears that the employee had failed to provide a suitable home for his wife and their children, and that the court had ordered the children placed in a charitable institution wherein they might receive needed food and attention. There was evidence that the employee sent the claimant money for her support, and that they lived together at different times subsequent to the issuance of the order of the court for the placing of the children in an institution. No home was provided, however, the living together referred to in the evidence consisting of various visits by the employee to the rooms at which the claimant remained. The rental of these rooms was paid for by the employee, according to the evidence of the claimant.

Held, that the widow was living with her husband at the time of his injury and death.
Review before the Industrial Accident Board.
Decision. — The Industrial Accident Board, revising the findings of the committee of arbitration, awards compensation to the widow as a total dependent, on the ground that she is living apart from her husband for justifiable cause.
Appealed to Supreme Judicial Court.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Florence M. Newman, widow of Edwin C. Newman, *v.* New England Casualty Company, this being case No. 1367 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Leo J. Dunn, representing the insurer, and George F. McKelleget, representing the widow, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Cambridge, Mass., on Friday, Jan. 1, 1915, at 10.30 A.M.

This case was heard jointly with that of Richard Newman, minor child of the deceased employee, and Florence M. Newman.

Robert B. Eaton appeared as counsel for the insurer, and Thomas H. Buttimer appeared as counsel for the widow.

It appeared in evidence that Edwin C. Newman was employed by the Stone & Webster Engineering Corporation, and while at work for them on the new Technology buildings, Cambridge, Mass., as a rigger, he fell backward, falling through a space 4½ feet by 1 foot 8 inches down a distance of 22 feet 6 inches, and landed on the back of his head on a 3 by 8 plank. He was given first aid and was then taken to the Cambridge Relief Hospital where he died as a result of the injury.

The contention of the insurer in this case is that there is no dependency; that the widow has not been living with her husband; and that they were not living apart for justifiable cause.

Florence M. Newman testified that she is the widow of Edwin C. Newman and that she is living in Boston at the

present time; her husband worked for the Stone & Webster people and was killed on Oct. 31, 1914; she was married to Mr. Newman in 1904, and she lived with him as husband and wife after that in Boston; she had three children and one is living, which is her son Richard, now in the Home for Destitute Catholic Children; prior to the decease of her husband, on October 31, she had been living with him as husband and wife; he had different positions, — he had one in Pawtucket, when he came home on Saturday nights and came to her place at 200 Harrison Avenue; he stayed in that room with her; he stayed Saturday nights and went away Sundays; she got a position herself in May, and she had to go back to work on Sundays; he was out of the State working for four or five years. She further testified that at the time the children were taken from them by the court authorities her husband was earning only $11 a week, and that they were unable to live on this, and that this is evidenced by the action of the court in taking the children away; she asked her husband for permission to go to work, as he was not supporting her as she needed to be supported, and he left her to take a job in Maine; she was in the family way at the time, and he told her to take an insurance book which he had and get some money on it and to sell the furniture; she sold the furniture and obtained $8 or $9 for it; she got $60 for the insurance book and sent him $10, keeping the rest to carry her over her confinement period; he went away in September and her baby was born in May; after that it was less than a year before she went to work, and she was living on the money which he sent her; during the time she was loafing he sent her $4, $5 or $6 a week; when she hired the rooms in which she lived he always paid the rent for them; while she worked at the Brewster Hotel she had a room outside at 14 Rollins Street, — he had his room and she had hers; he paid the rent for both rooms, — he gave her the money; she did not get her board at the Brewster, she had to eat outside, but they gave her $3.50 a week for her meals; when she worked down south in the hotel they gave her her room and board; her husband did not send her money then, — he did not know where she was; that was the first time she ever left Boston;

she was there from the 17th of November to the 10th of April; when she came back, about the middle of April, he was with Mrs. Collins, so she was back and forth to his house; he went to work in South Boston, and while he was working there he talked of starting housekeeping; he worked there six or seven weeks; prior to that he worked in Pawtucket; he was in Boston about nine or ten weeks, and during that time he lived with her all the time at Rollins Street; she was loafing three weeks before he died; he gave her $5.50 before he was killed; when he gave it to her he was at Rollins Street; she met him coming home from there and they went into Mrs. Collins' and had supper, and she stayed there that night; twice last summer he gave her the price of a suit, $15; she relied on him for support altogether; she did not have to work if she did not wish to; they had repeatedly talked recently about going to housekeeping and making a home for the boy; she had been saving money for that purpose.

Mary A. Collins testified that she knew Edwin C. Newman for twelve years; he did not room with her steadily, but he used to come there Saturday nights and Sundays; in 1909, just before Thanksgiving, he hired a room with her; he kept his room until April, when he went to Schenectady to work; until the day of his death he was living and boarding with her; she knew his wife; she had come to her house a number of times; she knows twice positively that she stayed in his room over night; outside of that she does not know; she was present at a conversation when he eased his mind about bringing the children together; about two weeks before Mr. Newman died his wife and he occupied the same room together; the Saturday night before he was killed she came to see him and they had a quarrel; she came there on the following Saturday night only to find that her husband had been killed. Mrs. Newman had been to her house a number of times and inquired about her husband; he was away from Boston a good deal of the time within the last three years; Mr. Newman used to come down to the beach where she was staying in the summer; there was always a place in her house where she could put him up when he came to Boston; she saw Mrs. Newman take a glass of beer with her husband on one

occasion, and she (witness) partook of the beer with them; on the night they had the beer together there was no concealment on his part that his wife was going to stay with him; she did not have breakfast or supper with her on that occasion; so far as she was concerned, Mrs. Newman was always welcome to come and stay with her husband, and she thought there was nothing unusual about her having done so.

We find, therefore, that Mrs. Newman was wholly dependent upon her husband; that they lived together as man and wife; that he regularly sent her money for her support; that there was such an actual living together as brought her within the class of a wife who was living with her husband at the time of his death, and hence conclusively presumed to be wholly dependent. If, however, it should be held by the court that these facts, and the continuance of the family relation as found did not constitute a living together, within the meaning of the statute, then we find that if she was living apart from her husband it was for justifiable cause due to his failure properly to provide a suitable home for her and her children, as evidenced by the action of the district court in placing the children in a home for destitute children.

We further find, therefore, that Florence M. Newman is entitled to recover compensation, and that the average weekly wages being $21.60, she is entitled to the maximum under the act, or $10 a week for a period of four hundred weeks from Oct. 31, 1914, the day of the injury.

DUDLEY M. HOLMAN.
GEORGE F. MCKELLEGET.

Leo J. Dunn dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, April 29, 1915, at 10 A.M., and finds and decides as follows: —

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by

the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows and the Board finds that Florence M. Newman, the widow of the deceased employee, was living apart from him for justifiable cause at the time of his injury and death, due to his failure to provide a suitable home for her and their children.

The Board finds, further, that the claimant widow, who was living apart from the deceased employee for justifiable cause, is conclusively presumed to be wholly dependent for support upon his earnings, and is entitled to a weekly compensation of $10 for a period of four hundred weeks from Oct. 31, 1914, the date of the injury.

The insurer's requests for rulings attached hereto are dealt with as follows: —

Requests Nos. 1, 2, 3, 7, 12, 13, 14 and 15 are refused; requests Nos. 4, 5, 6, 8. 9, 10 and 11 are given, in so far as they are consistent with these findings.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

Insurer's Requests for Rulings.

1 That the question of dependency in this case is a question of fact.

2. That the presumption in clause *a*, section 7, Part II. of the statute is not available to this claimant.

3. Upon all the evidence the Board must find that the deceased employee left no person or persons dependent upon his earnings for support, and that the insurer is liable only for the expenses of the last sickness and burial, not to exceed $200.

4. Upon all the evidence the Board must find that Florence M. Newman was not at the time of the employee's death living with Edwin C. Newman as husband and wife.

5. Upon all the evidence the Board must find that Florence M. Newman was not dependent upon the earnings of the deceased employee.

6. The mere legal duty of a husband to support his wife does not constitute dependency.

7. There is no evidence to justify the findings of the committee that the deceased employee and his wife were living apart for justifiable cause.

8. There is no evidence to show that the deceased employee contributed regularly to the support of his wife.

9. There is no evidence to show that the deceased employee and his wife lived together as husband and wife.

10. Upon all the evidence the Board must find that the deceased employee and his wife did not maintain a common habitation, and did not live together as husband and wife.

11. Upon all the evidence the Board must find that Florence M. Newman was not in need of the earnings of the deceased employee in order to obtain the necessities of life, and she therefore was not dependent on his earnings for support.

12. Upon all the evidence the Board must find that Florence M. Newman was at the time of the death of the employee employed and earning a sufficient amount of money for her maintenance and support.

13. Upon all the evidence the Board must find that the deceased employee left no person totally dependent upon his earnings for support.

14. If the Board finds that Florence M. Newman was dependent upon the deceased employee, it must find that such dependency upon the earnings of the deceased employee was but a partial dependency.

15. If the Board finds that Florence M. Newman was partially dependent on the earnings of the deceased employee, the Board must also find that such dependency is limited to $5 per week.

ROBERT B. EATON.

CASE No. 1367A.

RICHARD NEWMAN, MINOR CHILD AND ALLEGED DEPENDENT OF EDWIN C. NEWMAN (DECEASED), *Employee.*
STONE & WEBSTER ENGINEERING CORPORATION, *Employer*
NEW ENGLAND CASUALTY COMPANY, *Insurer.*

DEPENDENCY. MINOR CHILD WHO WAS NOT LIVING WITH NOR SUPPORTED BY THE EMPLOYEE IS NOT A DEPENDENT. NO CONCLUSIVE PRESUMPTION IN FAVOR OF CHILD WHO IS TAKEN FROM PARENT BY ORDER OF THE COURT AND PLACED IN A CHARITABLE INSTITUTION.

It appears that the claimant is the only surviving child of the employee, and that he was born on Jan. 19, 1905. By order of the court he was placed in a charitable institution on Sept. 19, 1907, and had neither received any support from nor had he been visited by his father from that time to the date of the latter's death.

Held, that the claimant was not a dependent.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Richard Newman, minor child and alleged dependent of Edwin C. Newman, deceased, *v.* New England Casualty Company, this being case No. 1367A on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Leo J. Dunn, Ames Building, Boston, Mass., representing the insurer, and Thomas J. Casey, 510 Pemberton Building, Boston, Mass., representing the minor child, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Cambridge, Mass., on Friday, Jan. 1, 1915, at 10.30 A.M. This case was heard jointly with that of Florence M. Newman, widow of the above-named employee.

Robert B. Eaton appeared as counsel for the insurer, and Daniel J. Triggs appeared as counsel for the minor child.

It appeared in evidence that Edwin C. Newman was employed by the Stone & Webster Engineering Corporation, and while at work for them on the new Technology buildings, Cambridge, Mass., as a rigger, he fell backward, falling through a space 4½ feet by 1 foot 8 inches down a distance of 22 feet 6 inches, and landed on the back of his head on a 3 by 8 plank.

He was given first aid and was then taken to the Cambridge Relief Hospital where he died as a result of the injury.

The claim of the insurance company was that there was no dependency in this case.

The agreed statement of facts follows: —

That Richard Newman, only surviving child of Edwin C. Newman and Florence M. Newman, was born in Boston on the 19th of January, 1905; that after proceedings by the Massachusetts Society for the Prevention of Cruelty to Children, and on the recommendation of the Juvenile Court, said Richard Newman was placed in the Home for Destitute Catholic Children, 788 Harrison Avenue, on the nineteenth day of September, 1907; that said Richard Newman has been in the care of said Home continuously from that time to date.

It appeared in evidence that Edwin C. Newman was a married man, and that some years before, his children were taken from him by the Society for the Prevention of Cruelty to Children, and under an order of the court were sent to the Home for Destitute Catholic Children; his son, Richard, survived him, and a claim was put in in behalf of the child that he was a dependent under the act. It appeared that the child had been in the Home for Destitute Catholic Children for a number of years; that the father neither visited the child nor did he in any way contribute to his support. The child was not living with the father at the time of his death, nor was he being supported by the father, and we find as a fact that he was in no way dependent on the father, and that he is not entitled to recover compensation as a dependent.

DUDLEY M. HOLMAN.
THOMAS J. CASEY.
LEO J. DUNN.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, April 29, 1915, at 10 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows and the Board finds that the claimant, Richard Newman, the minor child of the deceased, who was neither living with nor supported by the employee, Edwin C. Newman, at the time of his injury and death, was not a dependent under the Workmen's Compensation Act, and therefore not entitled to compensation.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE NO. 1370.

JOHN C. JOHNSON, *Employee.*
NEW ENGLAND STRUCTURAL COMPANY, *Employer.*
CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

SERIOUS AND WILLFUL MISCONDUCT. EMPLOYEE OBLIGED TO REMOVE GUARD TEMPORARILY. NEGLECTS TO REPLACE GUARD. INJURY OCCASIONED BY SUCH NEGLECT. THIS NEGLECT DOES NOT CONSTITUTE SERIOUS AND WILLFUL MISCONDUCT. EMPLOYER COMPLIMENTED FOR THOROUGH MANNER IN WHICH PLANT HAS BEEN SAFEGUARDED.

The employee was obliged, by reason of the nature of the work which he was required to do, to remove temporarily the guard which protected him from injury by the "cutter." When this job was finished he neglected to replace the safety

device, and later received the injury by reason of such neglect. The insurer claimed that this amounted to serious and willful misconduct, and declined to pay compensation.

***Held*, that the employee's injury was not occasioned by his own serious and willful misconduct.**

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John C. Johnson *v.* Contractors Mutual Liability Insurance Company, this being case No. 1370 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Peter Stockholm, representing the employee, and J. Frank Scannell, representing the insurer, heard the parties and their witnesses at the plant of the New England Structural Company, Second Street, East Everett, Mass., on Friday, Jan. 8, 1915, at 10.30 A.M.

Norman F. Hesseltine appeared as counsel for the insurer.

The sole question at issue was that of the serious and willful misconduct of the employee.

It was agreed that John C. Johnson was employed by the New England Structural Company, Second Street, East Everett, Mass., as a carpenter; that his average weekly wages were $19.25; that on Saturday, Oct. 10, 1914, at 7.30 o'clock, while in the course of his employment and while planing a small piece of board, his hand slipped, causing same to fall on the blade of the planer, cutting the little finger off at the second joint and also cutting the ring finger.

Mr. Johnson testified that there was a guard on the machine and that it was in place on the day of his accident; that when he was injured he was putting a piece of 2 by 4 stock about 6 feet long through the planer. He had finished shaving the broad side of it and had turned it on its edge, and was pushing it through the machine on its edge. He forgot to shove the guard up to the piece of stock, and his left hand slipped and struck the knives, cutting his left-hand ring finger and cutting off two-thirds of his little finger. The guard was not defective

in any way, and it was wide enough to cover the knives on the machine when set in place. He testified that he had one of the blue cards that was given out to the employees, and on this blue card were conditions, regulations and instructions for the employees to follow in regard to safety devices and different rules of the shop. He admitted, also, that there were notices posted around the shop, warning employees to be careful at their work. There was also a notice posted at the instance of the insurance company, which stated that employees who were injured, having removed the guards, would be considered guilty of serious and willful misconduct, and would not be entitled to compensation. A statement signed by Mr. Johnson was submitted by the insurer, which Johnson acknowledged to have been read over to him and to which he agreed.

Chester V. Green, Johnson's foreman, testified that Johnson was a good worker and a careful man; that he undoubtedly was instructed as to the use of the safety device; that he could not recall ever having had to warn Johnson against being careless or to warn him because he had not used the safety device provided by the firm. He said it was necessary to warn the employees frequently concerning the use of the safety devices; that this would happen two or three times a week, when employees were found not using the safety devices; that the New England Structural Company had not posted any notice of its own as regards any penalty for the failure to use safety devices, and as a matter of fact, violations of the rules occurred as often as two or three times a week without any punishment.

The committee viewed the machine where the accident occurred, and the safety device in the form of an arm which slides over the cutter and up next to the piece of wood which the employee is pushing over the face of the planer. In this particular instance, he had been doing a piece of work which required him, temporarily, to push aside the guard, and in going back to his regular work he forgot to push the guard in place, and as a result met with the injury. It was a temporary forgetfulness, — not a willful disobedience of orders, not a removal of the guard from the machine, knowing that when

this was done he was likely to receive an injury, but merely a momentary act of forgetfulness on his part.

We find, therefore, that the element of serious and willful misconduct does not enter into this case, and that the charge that he was guilty of serious and willful misconduct is not supported by the evidence. We find that he is entitled to compensation beginning with the fifteenth day after the injury to the date on which he returned to work, and that he is entitled to his medical attendance during the first two weeks after the injury, counting the day of the injury as one day. The amount of compensation due is $2.75. Additional compensation is due at the rate of $10 weekly for a period of twelve weeks, in amount $120, the total sum due being $122.75.

The committee of arbitration feels, in deciding this case, that they should compliment the New England Structural Company upon the way in which they have safeguarded their plant and the efforts that they are making to prevent the occurrence of accidents, and the committee would further express their appreciation of this work and do not wish to be understood by this finding as in any way desiring to underestimate the importance of a strict obedience of the rules regarding safety appliances placed by the employer, on his own initiative, on the danger points in his plant.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

DUDLEY M. HOLMAN.
PETER STOCKHOLM.
J. FRANK SCANNELL.

CASE No. 1380.

MICHAEL J. McCARTHY, *Employee.*
SPRINGFIELD BREWERIES COMPANY, *Employer.*
FRANKFORT GENERAL INSURANCE COMPANY, *Insurer.*

PERMANENTLY INCAPABLE OF USE. SPECIFIC INJURY. ADDITIONAL COMPENSATION. EMPLOYEE'S THUMB RENDERED INCAPABLE OF USE. INDEX FINGER RETAINS CONSIDERABLE DEGREE OF NORMAL USE. ADDITIONAL COMPENSATION DUE AS TO THUMB, BUT NOT AS TO FINGER.

The evidence showed that the employee had received a personal injury which had rendered the thumb permanently incapable of use. The index finger retained a considerable degree of normal use.

Held, that the employee was entitled to additional compensation on account of the specific injury to the thumb.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Michael J. McCarthy *v.* Frankfort General Insurance Company, this being case No. 1380 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, James O. Porter, representing the insurer, and William V. Baldwin, representing the employee, being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, 423 Main Street, Springfield, Mass., Friday, Jan. 8, 1915, at 11.30 A.M.

Harold P. Small appeared as counsel for the employee, and H. R. Bygrave appeared for the insurer.

The sole question in this case was whether the employee was entitled to an added compensation by reason of the condition of the thumb and index finger of his left hand, which were injured on April 4, 1914, in the course of his work, and arising out of the same. The thumb, index finger and parts of the bones and cords adjacent had been crushed and cut, some of the bone also

removed. The thumb appeared to be fixed and rigid; the index finger somewhat bent in, out of alignment with the other three fingers of the hand, and incapable of being fully flexed so as to reach over the thumb; could be flexed, however, and moved inward toward the palm to a considerable extent, at the will of the employee, although the fixed position of this finger, somewhat inward toward the palm, as compared with the other three, was permanent. This fixed position of the index finger was the feature most interfering with its use, leaving it considerably in the way of its normal use. The knuckle joint of this index finger was not injured, but the joint movement was restricted owing to the injury to the tendon; the middle joint of the finger was considerably stiffened, and there was no ability to move the end phalange through the will of the employee. There was, however, considerable bending and lifting power and some motion left in this finger.

The employee testified that he had done some work as a driver's helper since the injury, but he was working at the time of the hearing in the employer's stable, inside work, such as sweeping, cleaning, etc., with the same wages as before; that he could not use the injured hand in lifting barrels, underneath the barrel, as before, but had to use his right hand under the barrel to lift, and the left hand only to support the same on the side of the barrel; and that he did not want to have either the thumb or finger amputated.

Dr. C. J. Downey, called by the employee, testified that in his opinion the normal use of both the thumb and index finger was wholly lost to the employee as a practical matter; that they were both in the way and of no practical service; that in his opinion it would add to the serviceability of the hand if both the thumb and finger were removed, the removal of both, going down somewhat into the palm so as to entirely remove them, making a new and smooth palm with three good fingers.

The report of Dr. S. J. Russell, who examined the employee on Oct. 31, 1914, as impartial physician appointed by the Board, was received in evidence, of which the following is a copy: —

154 CHESTNUT STREET, SPRINGFIELD, MASS., Oct. 31, 1914.

JAMES B. CARROLL, *Chairman, Industrial Accident Board.*

DEAR SIR: — I have to-day examined Michael J. McCarthy. The thumb and index finger of his left hand have diminished capacity for use; they are not permanently incapacitated.

Yours truly,
S. J. RUSSELL, M.D.

On consideration of all the evidence and the application of Meley's case thereto, decided by the Massachusetts Supreme Judicial Court Oct. 23, 1914, the committee finds that the injured thumb has been rendered permanently incapable of use by the injury, and that the employee is therefore entitled, as an added compensation, to a payment of $8.50 a week for a period of twelve weeks, amounting to $102; that there appears to be a considerable degree of the normal use of the index finger left and of aid to the employee in using the hand, so that no additional compensation is due by reason of its present condition. If this finger should later be removed, however, as a result of the further trial of the use of the hand, or if it should later appear that it is permanently incapable of use in connection with the hand, the rights of the claimant to any added compensation therefor could then be laid before the Industrial Accident Board for its determination.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III., of the Workmen's Compensation Act and the general provisions of said act and its amendments.

DAVID T. DICKINSON.
JAMES O. PORTER.

William V. Baldwin dissents.

CASE NO. 1381.

NICOLA ROBERTO, FATHER OF ANGELO MICHELE ROBERTO (DECEASED), *Employee.*
MICHAEL McDONOUGH, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DEATH RESULTS FROM THE INJURY. DEPENDENCY. FATHER AND MOTHER WHOLLY DEPENDENT UPON EMPLOYEE FOR SUPPORT. BOTH LIVED IN ITALY AND HAD NOT BEEN ABLE TO WORK FOR SOME YEARS.

It appears that the employee received a fatal injury, arising out of his employment, on Dec. 22, 1913, and that he earned an average weekly wage of $12. During the year prior to his demise he sent his father and mother the sum of $135. This contribution was used for their support and, for a short time prior to the employee's death, for the support of another brother during the latter's sickness. The father and mother were wholly dependent upon the employee for support at the time of the injury, and lived frugally, in a little one-room structure, in the town of Castelfranci, Italy.

Held, that the claimants were wholly dependent.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Nicola Roberto, father of Angelo Michele Roberto, deceased, *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1381 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Frank Leveroni, representing the dependents, and W. Lloyd Allen, representing the insurer, heard the parties and their witnesses in the Hearing Room of the Industrial Accident Board, New Albion Building, Boston, Mass., on Friday, Jan. 1, 1915, at 2 P.M.

Vittorio Orlandini appeared as counsel for the dependents, and Gay Gleason appeared for the insurer.

This is a case of dependency, the question being whether the employee, who received injuries from which he died in the course of and arising out of his employment, left dependents, and if so, whether the dependency was total or partial, and the amount due as compensation. The average weekly wages of the employee, as agreed by the parties and found by the committee, were $12.

The employee, while working as a laborer in the course of his employment, on Dec. 22, 1913, was crushed by a steam roller, death resulting instantly.

Evidence was introduced by the claimant from Guiseppe Collella, Gregorio Pompigillo and Soccoro Sorto, who were friends of the deceased employee and his family while in this country, and of his family who were living in Castelfranci, Italy; also from Frorenzo Cardellicchio, manager of the Italian Department of the Rottenburg Bank of Boston. This evidence showed, and the committee finds, that the family of the deceased consisted of his father, Nicola Roberto, age sixty-seven years, his mother, about the same age as the father, and a brother, age twenty-eight years; that the father and mother had not been able to work for some years, and the brother had not been able to work on account of sickness for some time before the injury to the deceased; that they all lived in a little building or structure, containing one room or enclosure, in said town of Castelfranci, and they depended for their living and support upon contributions sent by the deceased from his earnings to the father; that the deceased had sent, for several years previous to his injury and death, to the said Nicola Roberto sums of money from his earnings; that this was usually done through drafts or orders sent from bankers in Massachusetts from whom the employee had purchased such drafts or orders with his wages; that such drafts or remittances to his father varied from $2 to $100 or, in Italian money, from 10 lire to 500 lire; that in the year preceding the death of the employee he sent to his father, who used it for his support and that of the family, the sum of $135.

The committee finds that the said Nicola Roberto was wholly dependent on the earnings of the deceased for his support at the time of the injury, and was the sole total dependent, and

is, therefore, entitled to a weekly compensation of $6, as said dependent, for a period of three hundred weeks from Dec. 22, 1913, the date of the injury.

Florinda Petrosino, Administratrix. Carlo Caliendo *v.* American Mutual Liability Insurance Company (Mass. W. C. C.). Massachusetts Supreme Judicial Court, December, 1914.

DAVID T. DICKINSON.
FRANK LEVERONI.
W. LLOYD ALLEN.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, Feb. 18, 1915, at 10 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that the employee, Angelo Michele Roberto, received a fatal injury arising out of and in the course of his employment on Dec. 22, 1913, and earned an average weekly wage of $12. During the period of twelve months prior to the date of said injury he sent his father, Nicola Roberto, the sum of $135, this contribution being used for the support of the father and mother of the employee, and also for the support, at least for a short time prior to the death of Angelo, of another brother, during said brother's sickness. The father, Nicola, to whom the contributions of the employee were sent, and his wife, the mother of the employee, were wholly dependent upon him for support at the time of the injury, and lived frugally, in a little one-room structure, in the town of Castelfranci, Italy.

The Board finds, upon all the evidence, that the claimant and father, Nicola Roberto, were wholly dependent for support upon his son, the employee, Angelo Michele Roberto, at

the time of the injury, and is therefore entitled to the payment of a weekly compensation of $6 from the insurer for a period of three hundred weeks from the date thereof, Dec. 22, 1913.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE NO. 1382.

RUSSELL H. CLARK, *Employee.*
CHARLES P. TERRY, *Employer.*
LONDON & LANCASHIRE GUARANTEE AND ACCIDENT COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. FOOLING. EMPLOYEE WAS PERFORMING HIS WORK AT THE TIME OF THE INJURY. FELLOW EMPLOYEE TICKLED HIM AND CAUSED HIM TO JUMP. COMPENSATION NOT AWARDED.

The evidence shows that the employee was performing his customary duties on the day of the injury. Another employee took hold of him about the ribs and tickled him. The employee was sensitive in that portion of his body, and, in endeavoring to get out of the other employee's way, jumped and fell, sustaining the personal injury which incapacitated him.

Held, that the injury did not arise out of the employment.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Russell H. Clark *v.* London & Lancashire Guarantee and Accident Company, this being case No. 1382 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Frank M. Silvia, 14 Borden Block, Fall River, Mass., representing the

insurer, and Fred W. Hodgman, Assonet, Mass., representing the employee, heard the parties and their witnesses in Committee Room 35, City Hall, Fall River, Mass., on Tuesday, Jan. 19, 1915, at 2.30 P.M.

John T. Swift appeared as counsel for the insurer.

It was agreed that Russell H. Clark was in the employ of Charles P. Terry on the date of the accident, Friday, Oct. 23, 1914; that his average weekly wages were $13; and that if he was entitled to compensation he would be entitled to two-thirds of his average weekly wages.

The question at issue was whether the accident arose out of his employment.

Mr. Clark testified that on the morning of the accident he came down to the store with his team; on reaching there he began to unload boxes; there was a shelf on which to place these boxes, so he started to pack them up there, and while he was doing this Mr. DeCosta, another employee, came up behind him, grabbed him in the ribs and tickled him. He is very ticklish, and in order to get out of DeCosta's way he jumped, gave two or three struggles, and then they fell down in the doorway; he did not turn around to wrestle with DeCosta — he never laid his hands on him; when he fell, he fell over some cans which were there, and DeCosta came down on his leg and broke it; the reason he struggled to get away from Mr. DeCosta was because he cannot bear to be tickled; he had not been fooling with him before that; he was laid up from the 23d of October, 1914, and the first day he went to work was the day before the hearing, Jan. 18, 1915; he was not able to go to work before that.

Mr. DeCosta testified that on the day of the accident he came into the room where Mr. Clark was; he grabbed hold of Clark and kept hold of him; Clark wanted to free himself, and as he swung around Clark landed on these cans — he fell and struck on them; he had not been wrestling with him before that; he had just come in; he came up behind Clark and tickled him; then Mr. Clark tried to free himself and they both fell; Mr. DeCosta fell over Mr. Clark's right leg.

Mr. Thurston testified that he happened to come into the store that morning; he could not say just what time it was,

but Mr. Clark was just driving in; he, Clark, backed up the horse and was unloading these boxes that they use in the store, and while he was putting them on the rack, Mr. DeCosta came through the main store and grabbed Clark around the waist. Clark had his hands up, and from what he could see, he sort of tickled him; then Mr. Clark struggled to free himself, and during that time they slipped and fell, and Mr. Clark fell over these cans and Mr. DeCosta rolled over on to his leg. It was all done very quickly and he did not notice the particulars. Mr. Clark did not turn and wrestle with DeCosta, he simply tried to free himself; DeCosta was hurt too, his head was bleeding; one of the cans over which they fell was a 10-gallon can used for paint oil, and the other was a 5-gallon can used for kerosene, he would judge; witness is not employed in the store; he is a chiropodist by profession.

Mr. Terry testified that he is proprietor of the store, and both Mr. Clark and Mr. DeCosta work for him; Clark has worked for him four or five years and DeCosta for a year and a half; he was not in the store at the time of the accident; all he knows is what he got from Mr. Thurston; when he sent in the report he said they were wrestling because that was all he knew about it — that was what he heard; he took it for granted that they were wrestling — that was his conclusion.

At the close of the hearing both Mr. Swift, attorney for the insurer, and Mr. Hardy, adjuster for the insurer, stated that if there was any way in which the committee could decide the case so as to give the man his compensation they were perfectly willing to pay him, but they could not agree that his injury arose out of his employment.

This is a case where the employee was engaged in his employer's business; he, himself, was attending strictly to the duties required of him, and was not engaged in fooling, nor did he undertake to wrestle with the man who grabbed him; nevertheless, a careful examination does not disclose any fact which shows that the accident arose out of his employment.

We find, therefore, on the weight of the evidence, that while the accident arose in the course of his employment it did not arise out of it, and that he is not entitled to recover.

This decision and all findings regarding compensation, or

the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

DUDLEY M. HOLMAN.
FRANK M. SILVIA.

Fred W. Hodgman dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room of the Board, New Albion Building, Boston, Mass., on Thursday, March 4, 1915, at 10.15 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The point at issue was whether a personal injury received by an employee, while he was performing the work required of him in accordance with his contract of hire, by reason of the horse play or fooling of a fellow employee, in which he was not a participant, was covered by the Workmen's Compensation Act.

The evidence shows that the employee, Russell H. Clark, was placing boxes on a shelf at his place of employment on Oct. 23, 1914, and that a fellow employee grabbed him about the ribs and tickled him. Clark was very ticklish, and, in endeavoring to get out of the other employee's way, jumped and fell, receiving the personal injury which incapacitated him.

The injury to this employee did not arise out of his employment. It has been held uniformly in England that it is not within the scope of employment for employees to indulge in fooling or larking, and a personal injury received as a re-

sult of such larking, whether or not the employee is a party to the larking, does not arise out of the employment.

In Armitage *v.* Lancashire & Yorkshire Ry. Co. (1902), 4 W. C. C. 5, where an employee who was busily engaged at work was struck by a piece of metal thrown by a fellow employee at a person other than the injured employee, it was held that the injury did not arise out of and in the course of the employment; also in the Scottish case of Falconer *v.* London & Glasgow Engineering and Iron Shipbuilding Co. (1901), 31 Sc. L. R. 381, under almost identical circumstances; also in Clayton *v.* Hardwick Colliery Co., Ltd. (1914), 7 B. W. C. C. 643, in which latter case an employee was injured by a stone thrown by a fellow employee.

The Industrial Accident Board finds upon all the evidence that the personal injury received by the employee, Russell H. Clark, on Oct. 23, 1914, did not arise out of his employment, and that no compensation is due him from the insurer under the Workmen's Compensation Act.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1383.

HENRY B. COKER, *Employee.*
ESTATE OF J. J. K. COKER, *Employer.*
MARYLAND CASUALTY COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. STATUS OF CLAIMANT. EMPLOYEE OR EMPLOYER. MOTHER OF EMPLOYEE IS EMPLOYER. CARBUNCLE DEVELOPS. DUE TO GERM DISORDER. BURDEN OF PROOF NOT SUSTAINED. COMPENSATION NOT AWARDED.

The employee claimed to have been incapacitated for work by reason of a carbuncle which appeared and required medical treatment on or about July 30, 1914, said carbuncle being due to the conditions under which he was obliged to perform his work on or about that date. It appears that he had been engaged in tearing down a partition and rearranging the same in the paint shop where

he worked; that there was considerable rubbish around; that it was a hot day and that he perspired freely at his work; and that the condition which incapacitated him is a germ disorder which would enter a person's system either through a cut or through the pores of the skin, if the state of the person's vitality was so lowered as to cause it. It was shown that the business in which the employee was engaged was owned by his mother.

Held, that the employee did not sustain the burden of proof.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Henry B. Coker *v.* Maryland Casualty Company, this being case No. 1383 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Herbert A. Derby, representing the employee, and Martin F. Connelly, representing the insurer, heard the parties and their witnesses in the Council Chamber, City Hall, Salem, Mass., on Tuesday, Jan. 12, 1915, at 10.30 A.M.

J. J. Coker appeared as counsel for the employee, and John W. Britton appeared for the insurer.

The claimant in this case had suffered from the appearance of a carbuncle upon the radial side of the left arm, it first appearing like the small swelling of a mosquito bite. It developed so that the carbuncle had to be removed by an operation performed by Dr. Gardner. He also received medical attention therefor at the Massachusetts Homœopathic Hospital and from Dr. Gardner, who gave twenty-two surgical dressings, nine being rendered during the first two weeks after the appearance of the carbuncle. The hospital bill was $9.85.

Two questions were raised at the hearing: first, was the claimant an employee at the time of the alleged injury he received on July 30, 1914, or was he the proprietor of the business concerned in this case himself; and second, did he receive an injury arising out of and in the course of his employment.

On the first question the committee finds that the claimant was an employee, working for his mother as a foreman painter

in the business which had been inherited from his father. The business was being conducted in the name of the Estate of J. J. K. Coker. The evidence showed that all heirs had released their interests in the same to their mother, and she was the proprieter at the time of the alleged injury.

The evidence given on the second question was substantially as follows: Henry Coker, the claimant, testified that he worked during the day of July 30, 1914, at tearing down a partition and rearranging the same in the paint shop where he worked; that there was considerable dirt and rubbish around the shop; that it was a summer day of some warmth and he sweat more or less at his work; that no cut or puncture was received by him on that day at his work; that he was not particularly exhausted from the effects of his work on that day, and did not remember an extraordinary amount of sweating from his labors of the day; that on the following day, about the close of his work, he noticed the small swelling like a mosquito bite, and that this developed into a carbuncle which required medical treatment and an operation, and occasioned the disuse of his hand from Aug. 3, 1914, to Sept. 28, 1914, so that he was disabled for work during that period.

Harry T. Stillman and Edward Stillman testified substantially as did the claimant as to the work of removing and rearranging the partition on July 30, 1914.

Dr. Frank A. Gardner testified that a carbuncle was due to a germ disorder; that the germ would enter a person's system either through a cut or through the pores of the skin, and that if one so entered, either way, the germ might develop into an active carbuncle, if the state of the person's vitality was so lowered as to cause it; that the lack of resisting power was the explanation of how such germs developed into the virulent form; that the germ which caused the carbuncle in the claimant's case might have come from dirt or other conditions of the paint shop, or from places outside the paint shop.

The committee finds that the claimant has not proven by sufficient weight of evidence that his vitality, either generally or locally in the arm or skin, was reduced by his occupation on July 30, 1914, so that the carbuncle developed from such a cause, as was contended by the claimant; that, therefore, the

employee did not receive this carbuncle as an injury arising out of and in the course of his employment; and that the insurer is not liable, therefore, for compensation.

DAVID T. DICKINSON.
MARTIN F. CONNELLY.

Herbert Derby dissents.

CASE NO. 1384.

MICHAEL SULLIVAN (DECEASED), *Employee.*
D. F. DONOVAN & CO., *Employer.*
CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DEATH RESULTS FROM THE INJURY. DEPENDENCY. CANCER OF THE LIVER. EMPLOYEE SUSTAINS FALL. DIES YEAR LATER. NO CAUSAL CONNECTION BETWEEN INJURY AND DEATH. COMPENSATION NOT AWARDED.

It appears that the employee received a personal injury by reason of a fall on Aug. 28, 1913, and that he received treatment at the hospital for a fractured arm. Death resulted from cancer of the liver on Oct. 7, 1914. His widow alleged that the disease from which he died was attributable to the fall, claiming that the employee had injured his side as well as his arm. The evidence showed that no treatment had been given him for the alleged injury to the side, except that the widow stated that she had given him such treatment as he required. The weight of the medical evidence was against the claim of the widow, one of the physicians stating that it would require an injury severe enough to lacerate the tissues to cause cancer of the liver.

Held, that the death of the employee was not due to a personal injury arising out of his employment.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Widow of Michael Sullivan *v.* Contractors Mutual Liability Insurance Company, this being case No. 1384 on the files of the Industrial Accident Board, reports as follows: —

The arbitration committee, consisting of Thomas F. Boyle of the Industrial Accident Board, chairman, Francis X. Quigley, representing the employee, and Herbert L. Barrett, representing the insurer, heard the parties and their witnesses in the Selectmen's Room, Town Hall, Brookline, Mass., on Friday, Jan. 1, 1915, at 10.30 A.M.

S. E. Duffin appeared as counsel for the employee, and Norman F. Hesseltine appeared for the insurer.

The only question in this case was whether the employee's death was the result of an injury which he received on the 28th of August. The attorney for the widow claimed that the fall produced the cancer from which the man died.

The insurance company paid the employee compensation at the rate of $10 a week for a period of fifty-five weeks, during which time the employee was incapacitated as a result of the injury.

Mrs. Michael Sullivan, widow of the deceased employee, testified: —

My husband was injured on Friday, Aug. 28, 1913. After the fall my husband was pretty well smashed up. He bruised his side, and his arm was quite sore, so he went to the City Hospital and had it treated. Before his injury he always worked. My husband's side was all black and blue after he fell. I asked him why he did not show it, and he said he felt so bad and so weak that he did not want the doctors handling him any more. I treated him for his side myself. The only treatment he got at the City Hospital was for his arm. My husband died on Oct. 7, 1914.

Hubert T. Holland, M.D., testified: —

I am a practicing physician residing at 423 Centre Street, Jamaica Plain. I have treated Mr. Sullivan since the winter or fall of 1896. Since that time I have personally treated him for colds in the head, chest colds, attacks of indigestion, and also some trouble he had with his shoulder which limited the motion in the arm. Mr. Sullivan worked about nine-tenths of the time. The first time he came to me after his injury was in the fall of 1913, and his condition at that time was undefinable. He expressed it that he was just feeling mean, so I prescribed a tonic for him. His condition kept getting worse until he died, and my diagnosis was cancer of the stomach and the liver. He had a great many symptoms of cancer, such as loss of weight, jaundice, his heart went to pieces at the end and also his kidneys. When he fell it was a shock to the general system. At the time I did not think that it had anything to do with pro-

ducing the cancer, but I think that it was in such a state that the accident made it flare up. Mr. Sullivan was about sixty years of age. A shock like that will lower the vitality and resistance of the individual so as to allow a disease which is already present to go on quicker than ordinarily. On examining him after the accident I found no albumen or sugar in the urine. I found he had an enlarged liver and his stomach was hard, which made me very suspicious of his condition, and I felt that there was a growth. Before he came to me he had been going to the hospital for treatment. Dr. Bottomley did not come in until just before Mr. Sullivan died. I took Mr. Sullivan's blood pressure and found it to be about 150 or 160, which is normal in a man of his age. He had a severe shock when he fell and he went to pieces afterwards. It very often happens that in a man of his age a shock of this nature makes him go to pieces, and he dies of something else other than the injury which he received. It averages two years for a cancer to develop. When Dr. Bottomley examined him he did not say that it was cancer; he said it was his heart and kidneys. He only saw him for a few minutes, and the man died a few days afterwards. At the time Dr. Bottomley saw him he was nauseated and vomited up this dark fluid, which the doctor thought was caused by the condition of his liver. I was suspicious of a growth in this man prior to the accident, but from the time of the accident he went down rapidly. The symptoms became very much more pronounced. I think Mr. Sullivan would have died anyway from the condition which existed, but the injury which he received lowered his resistance and hastened the disease which was in his system. The shock of the injury lowered his vitality so that the disease made more rapid progress than it would under ordinary conditions. He came to me after the injury for relief from his weakness which he said came on after he was injured. He said, "I never got over that shaking up which I got."

Charles Kickham, M.D., testified:—

I saw Mr. Sullivan about half an hour after he was injured. He apparently had a fracture of both bones of the lower right arm. I temporarily splintered it and advised him to go to the Boston Relief Hospital. I did not examine his right side, and he did not complain of anything more than his arm.

F. H. Morse, M.D., testified:—

I have prepared and written a paper on the surgical treatment of chronic intestinal stasis, and I have made a study of carcinoma of the liver as it is connected with intestinal stasis. The cause of cancer is generally thought to be the breaking down of tissue of some part of the body that has in some way been damaged. The damage may be a direct injury or a damaged part from disease. To make it plainer, a woman may have a child strike her, or run against the bureau and hit her breast, and a

bunch will start and will go on for twenty-five years, and as she gets older and her resistance less the cancer appears. A person may have gastritis which extends through the outlet of the stomach into the duodenum. This inflammation may go on for years and go under the name of attacks of indigestion, bilious attacks, or perhaps congestion of the liver, but a person may have such bad attacks that ulcers form and finally cancer sets in. A person who has an injury when he is very young, perhaps twenty or thirty, might develop cancer thirty years later, when the infirmities of age have come on him. Mr. Sullivan's only complaint to me was that he wished that his wrist would get limbered up so that he could go back to work. He seemed to be in normal condition for a man of his age. He had ankylosis of the wrist following the break, and I treated that, and he got considerable motion. When he would come in I would ask him how he was, and he would say that he was feeling pretty tired, and that he would like to get back to work. The first time he came to me was Oct. 24, 1913, and he was there for the last time on May 4, 1914. I treated him fifteen times for the company and ten more times on his own hook. After May I did not hear any more from him until I heard of his death. I do not think the injury which Mr. Sullivan received could have caused the cancer. I do not remember Mr. Sullivan complaining of his side when I was treating him. It would require an injury severe enough to lacerate the tissue to cause cancer of the liver. A bruise might be severe enough to cause cancer on an external part, but to cause cancer on an internal part a laceration would be necessary. From the very beginning I suspected that this man was cancerous. He looked like one that was going to pieces inside.

Herbert W. Swift testified:—

I am connected with the Contractors Mutual Liability Insurance Company, and I saw Mr. Sullivan within a week after the accident. He wanted to go back to work each time that he would come to the office, and he asked me if I could get him a job as a watchman. He wanted me to take it up with his employer and see if he wouldn't give him some light work to do. I also tried to get him work with some friends of mine who are contractors. He did some light work in Brookline, I think, but he said he was not strong enough for it, so had to give it up. He said that with the exception of his wrist he felt fine.

On this evidence the committee of arbitration fails to find any causal connection between the said personal injury and the death of the employee, and the claim of the widow is therefore dismissed.

THOMAS F. BOYLE.
HERBERT L. BARRETT.

Francis X. Quigley dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, March 25, 1915, at 10.30 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The widow claimed that the death of the employee, Michael Sullivan, on Oct. 7, 1914, from cancer of the liver was the result of a personal injury to his side by reason of a fall which occurred on Aug. 28, 1913.

The evidence showed that the employee had not been treated for the alleged injury to the side by any physician or hospital, the widow stating that she treated her husband for this injury herself. Immediately after the injury the attending physician, Dr. Charles Kickham, found that he had a fracture of both bones of the lower right arm, and placed them temporarily in splints, sending the employee to the Boston Relief Hospital. At the hospital he was attended for the injury to the arm, and Dr. Hubert T. Holland, who was called into the case in the fall of 1913, stated that his condition at that time was undefinable. His last diagnosis was cancer of the stomach and liver. Dr. Holland stated that, in his opinion, the injury did not have anything to do with the producing of the condition of cancer, but that the cancer was in such a state that it made it flare up. Dr. F. H. Morse stated that he treated the employee on fifteen different occasions, from Oct. 24, 1913, to May 4, 1914; that he had no recollection of the employee complaining of an injury to his side; that it would require an injury severe enough to lacerate the tissues to cause cancer of the liver; and that he did not believe that the personal injury received by the employee on Aug. 28, 1913, caused the cancer from which he died.

The Board finds upon all the evidence that there was no

causal connection between the personal injury received by the employee on Aug. 28, 1913, and the condition of cancer which caused his death on Oct. 7, 1914, and that therefore no compensation is due the claimant widow under the statute.

DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
THOMAS F. BOYLE.
JOSEPH A. PARKS.

CASE No. 1386.

KATIE COUSSEIATIS, *Employee.*
ESSEX GELATINE COMPANY, *Employer.*
SECURITY MUTUAL CASUALTY COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. BURDEN OF PROOF. MALINGERING. INVESTIGATION FAILS TO DISCLOSE ANY EVIDENCE OF INJURY. EMPLOYEE OBVIOUSLY ABLE TO DO PHYSICAL LABOR. IMAGINES SHE CANNOT DO SUCH WORK. COMPENSATION NOT AWARDED.

The evidence fails to disclose the occurrence of a personal injury arising out of the employment. A diligent investigation among the employees who worked in the room with her failed to produce any person who witnessed the alleged injury, and the weight of the medical evidence showed that since October, before she claimed to have received the injury, and later, in December of the same year, the employee had been practically in the same condition; that is, obviously she was able to do physical labor, but imagined that she could not do such work.

Held, that the employee is not entitled to compensation.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Katie Cousseiatis *v.* Security Mutual Casualty Company, this being case No. 1386 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Charles J.

Powell, representing the employee, and Ralph W. Stearns, representing the insurer, heard the parties and their witnesses in the Selectmen's Room, Town Hall, Peabody, Mass., on Friday, Feb. 5, 1915, at 10.30 A.M., and at the Board Room of the Industrial Accident Board, New Albion Building, Boston, Mass., on Wednesday, April 7, 1915, at 2 P.M.

S. Howard Donnell appeared as counsel for the employee, and Putnam B. Smith appeared for the insurer.

The question in this case was whether the employee received an injury arising out of and in the course of her employment, and if so, what was the extent of her incapacity.

Dr. John F. Jordan, called by the employee, testified substantially as follows: That the first time he saw the employee was on Oct. 16, 1915, at her home; that he received the statement through an interpreter that she had been lifting a heavy box while at work and hurt her side, and that soon after this she raised blood, and had to leave her work and go home; that she was in bed when the doctor saw her; that he prescribed oil for her and applied adhesive plasters to her side and back; that she complained of pain and soreness in her back and left side; that he thought she had a little swelling on the left side, but was not positive as to that; that he thought perhaps she had injured a muscle, so he strapped her side up; that he gave her oil because when he first saw her she told him she had been to a doctor and that this doctor told her she was in consumption; that he, the witness, assumed without much examination that she probably had consumption, so he gave her the usual treatment for that disease; that he was not positive that she had consumption; that he found a few rales; that her general condition was good; that he thought she would be able to return to work in about a month from the date of his last visit which was on Nov. 6, 1914; that he never knew of a case where bleeding started from a strain unless there was some disease of the lungs to begin with; that if she had a bleeding resulting from the strain there probably was a focus of disease in the lung, and with that focus she might bleed from the strain; that assuming she had consumption, the strain would cause the hemorrhage to come on sooner than it naturally would without such strain.

Dr. F. O. Elder, called by the insurer, testified that he examined the employee on Dec. 17, 1914, and that his examination was entirely negative; that her temperature was 98 and her pulse was 80; that the chest examination was negative and he could get no history of previous chest trouble; that he could find no trouble with her back; that there were no areas of tenderness; that she complained of chest pains; that at the time of his examination she was able to work; that her sputum was not examined for consumption and there was no bacteriological examination; that in his opinion it would take a very severe injury to cause a hemorrhage of the lung; that he would not say she had consumption without a bacteriological examination.

Katie Cousseiatis, the employee, testified through an interpreter, substantially as follows: That about eight months ago she was working for the Essex Gelatine Company; that a forewoman told her to clean up a large empty wooden box which was about 5 feet long and 3 feet high, and directed another woman to help the employee clean the box and lift it over; that the box was heavy and she could not lift it alone; that the other woman did not come to help her and she undertook to lift it alone; that she then had an attack of spitting blood and that she fell down; that she did not want anybody to know she was sick and kept on working that day and worked until the day of the second injury; that at this time a man who was a boss told her to lift some racks, and she told him she was not able to do it; that he then spoke harshly to her and again told her to lift the racks; that she took hold of the racks and lifted them and then fell to the floor and had another attack of spitting blood; that he then told her she could do some sweeping; that she told him she could not work any more; that she went home and has not worked since; that she had Dr. Jordan the next day. The employee pointed out Mr. Staid, superintendent of the Essex Gelatine Company, as the man who directed her to lift the racks.

James Staid testified substantially as follows: That he was the superintendent of the Essex Gelatine Company; that he did not remember directing this employee to do any work about the middle of October; that he might at some time have

directed her to do work, but did not remember the exact date; that he did not remember at any time ever giving her an order to lift racks; that he did not know of any accident happening to her at the plant; that he had asked various workers at the plant and could not find anybody who knew about any accident to this girl; that these racks were 5 feet long by 3 feet wide and 1 inch high, and weighed about 5 pounds; that two people always lifted these racks; that three racks were generally lifted at a time; that on the morning of Oct. 5, 1914, the employee gave the witness a certificate from a doctor, which read that she was unable to do hard work; that she did not tell him anything about an accident; that she worked until noon of that day.

Julian Prokopehock testified substantially as follows: That he was the foreman of the department in which the employee worked; that he did not direct her to lift any trays; that he did not see her fall down or spit blood; that two girls always lifted the racks together; that he did not know of any accident to her; that she worked in the forenoon of October 15, but did not work in the afternoon.

W. W. Copley, manager of the Essex Gelatine Company, testified substantially as follows: That these racks are 5 feet long and 3 feet wide, and are a frame made of material about 1½ inches wide by three-fourths inch thick, and carry a wire net; that the glue is spread on the net to dry; that after this glue passes through the dry room these racks are pulled out on a truck to a large box; that one of these racks filled with dry gelatine would not weigh more than 6 pounds; that the work of the employee was to take the racks from the truck, dump the glue into the large box, and then put the empty racks one on top of another in a pile; that two girls always lifted the racks; that this employee also did some cleaning, sweeping, etc.; that in cleaning out large boxes an end board was removed and the boxes swept out; that these are very large boxes on casters, and in his opinion it would be impossible for the employee to lift one of these boxes alone; that if she did lift one of these boxes she did it on her own responsibility. Mr. Copley further testified that the last day the employee worked was on Oct. 15, 1915; that she had lost considerable time during the year; that pay day was Wednesday, and she

was out of work five Thursdays from January, 1914, to Oct. 15, 1914.

The report of the impartial physician, Dr. Cadis Phipps, was received in evidence, a copy of which follows: —

IN RE KATIE COUSSEIATIS.

Physical Examination. — Well-developed and nourished. Color: lips red and cheeks flushed. Pupils equal and react normally. Mucous membrane red but not cyanosed. Nose showed large turbinate bones; septum deviated to left and a small erosion on the left (not bleeding). Throat normal except for reddened membranes. Tonsils spongy and red. No glandular enlargement. Neck normal. Chest symmetrical; lungs resonant throughout; breathing, vesicular; tactile and auditory fremitus normal; both isthmi broad and of good resonance; a few medium moist rales heard persistently in the left base in the axillary line; no rales heard elsewhere; no fracture rub heard. Heart: normal in area (2 c.m. to the right and 10 c.m. to the left); action regular; sounds clear and of good quality; no murmurs heard. Pulses equal and regular; radial arteries not thickened; blood pressure 142. Abdomen normally lax and tympanitic; no real spasm could be made out, although the patient complained of vague tenderness. Liver and spleen not felt and not enlarged to percussion. Extremities: no edema; reflexes normal.

(Patient complains of soreness of muscles of the back, but no definite tenderness could be made out.)

Temperature, 98.6. Pulse, 78.

(I was unable to get a specimen of sputum for examination.)

Diagnosis. — (1) The patient shows no evidence of phthisis or any other organic disease at present.

(2) The bleeding probably came from the nose or throat, and the plethora (red mucous membranes and blood pressure of 142) may have made her more liable to hemorrhage.

(3) The pain was probably muscular, and at present should not prevent her from returning to work.

(4) Because of the indefinite symptoms and the contradictory statements made I feel confident that a large part of the patient's trouble is imagined.

The rales heard in the left chest may possibly have been the result of an old pleuritis, but at present are not indicative of phthisis.

Further Notes. — (1) The accident occurred at the time of the menstruation, which is always profuse.

(2) While talking with the patient I was able to squeeze various muscles without causing pain; but when the patient's attention was directed to these same muscles she complained so much of the pain that I could hardly touch them.

(3) The patient stated that breathing was very painful, but after exercising she breathed deeply with no apparent difficulty.

CADIS PHIPPS.

The committee finds that the claimant failed to establish, by a fair preponderance of the evidence, that she received an injury arising out of and in the course of her employment with said employer; that the injury as alleged, if it occurred at all, came from a strain through lifting a tray of small weight on the day when she ceased work at her employer's plant, on Oct. 15, 1914; that on the morning of this same date, before the alleged strain, it was shown that she was already suffering from some alleged trouble which would prevent her from doing heavy work, as shown by a written letter or statement from Dr. Silverman of Chelsea, which statement she handed to her foreman that morning. No witnesses were introduced, after diligent investigation among employees who worked in the room, who saw the claimant fall after lifting the tray or who knew anything about such an occurrence. The evidence shows that since October, before she received the alleged injury, and later, from her physician, Dr. Jordan, in December, 1914, the claimant has been practically in the same condition, viz., obviously able to do physical labor, but with an imaginary belief that she could not perform the work which her physical condition showed she was able to do. The examination and tests of her condition made by the impartial physician, Dr. Cadis Phipps, particularly showed this. The committee, therefore, finds that as it has not been proven by a fair preponderance of the evidence that she has been incapacitated by an injury received in the course of and arising out of her employment, the insurer is not liable for compensation.

DAVID T. DICKINSON.
RALPH W. STEARNS.
CHARLES J. POWELL.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, May 20, 1915, at 10.30 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that the employee, Katie Cousseiatis, is not incapacitated for work by reason of a personal injury arising out of and in the course of her employment. A diligent investigation among the employees who worked in the room with the employee failed to produce any person who had witnessed the alleged injury. and the weight of the medical evidence showed that since October, before she claimed to have received the injury, and later, in December, 1914, the claimant had been practically in the same condition; that is, obviously able to do physical labor, but imagining that she could not do such work.

The Board finds upon all the evidence that the employee, Katie Cousseiatis, did not receive a personal injury arising out of and in the course of her employment, and dismisses her claim for compensation.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE NO. 1388.

JOHANNES M. RODYK, *Employee.*
WAITT & BOND, *Employer.*
ROYAL INDEMNITY COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. OCCUPATIONAL DISEASE. CIGAR MAKER IS INCAPACITATED BY CONDITION OF NEURITIS. COMPENSATION AWARDED.

The employee, a cigar maker, became incapacitated for work by reason of a condition of neuritis which manifested itself by numbness and weakness of the index finger of the right hand and a moderate weakness of the extensor muscles of the right arm. This condition was due to his employment.

Held, that the injury arose out of the employment.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Johannes M. Rodyk *v.* Royal Indemnity Company, this being case No. 1388 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, representing the Industrial Accident Board, chairman, Austin P. Kaveney of Boston, Mass., representing the employee, and Harold J. Quinlan of Boston, Mass., representing the insurer, heard the parties and their witnesses at the Board Room, New Albion Building, Boston, Mass., on Monday, March 29, 1915, at 2 P.M.

Johannes M. Rodyk, the employee, a cigar maker, receiving an average weekly wage of $21.50, was obliged to leave his employment on Sept. 8, 1914, by reason of a severe pain in his right arm and shoulder. Compensation was paid by the insurer at the rate of $10 a week from Sept. 22, 1914, to Jan. 5, 1915, at which latter date the insurer stopped the payment of compensation, claiming that the condition of neuritis, from which the employee was suffering, did not arise out of and in the course of his employment, and further, that he was able to resume his employment.

Dr. D. L. Edsall examined the employee on Nov. 20, 1014, as the impartial examiner appointed by the Board, and reported as follows: —

I have, as you requested, examined Johannes M. Rodyk with a view to determining whether he is incapacitated for work by reason of an injury arising out of and in the course of his employment. I find that he has pain, moderate muscular weakness and apparent slight atrophy of the muscles in the right hand, arm and shoulder. He has, therefore, the signs of a distinct though mild neuritis. General examination has shown no other cause for the neuritis than his occupation, and, since neuritis is known to occur at times as a consequence of the work of cigar making, I believe that the man has a neuritis, and that the neuritis has arisen out of and in the course of his employment at that trade.

Following this report the insurer began to pay compensation and continued to pay it up to Jan. 5, 1915. On Jan. 26, 1915, the employee was again examined by Dr. Edsall, who reported as follows: —

I wish to report to the Industrial Accident Board that, at your request, I again examined Johannes M. Rodyk. He has improved since I saw him before. He still, however, presents some numbness and slight weakness of the index finger of the right hand, and a moderate weakness of the extensor muscles of the right arm. He states that, while he is much improved in this way, he still has some pain. I do not believe that the man exaggerates his complaint. I think that at present he would probably be able to work about the normal number of hours, but I believe that if he went back to work now he would be likely to have, within a very short time, a return of his trouble, and that economically, not only for him, but for the persons who are paying compensation, it would be profitable to give him compensation for a few weeks longer in order to try to obviate the probability of a prolonged recurrence of the trouble. That is purely a question for the Board to decide, but I mention this only to attempt to make my view of his case clear.

A certificate, signed by Dr. C. D. McCarthy of Malden, under date of Feb. 14, 1915, and presented by the employee, states: —

I think Mr. J. Rodyk of this city, a member of the Workmen's Sick and Death Benefit Fund, is still unable to use his arm in his business. His trouble is neuritis (occupational).

Dr. Ross E. Savage of Boston, according to the statement of the employee, is giving him treatment at the present time for occupational neuritis; he has received five treatments for which he pays $5 each, and the employee stated that he was getting relief on account of the same.

Dr. William J. Daly, who examined the employee at the request of the insurer, on Nov. 3, 1914, and Feb. 3, 1915, testified that the first examination was thoroughly negative. He found hyperesthesia along certain areas of the right arm, the back of the arm and the radial nerve of the forearm; there was no muscular wasting or atrophy; and he had returned a report of a mild neuritis, but he is more inclined to diagnose the trouble as brachial neuralgia. In occupational neuritis there is a certain definite relation between the muscles concerned in

the occupation and the time of the appearance of the pain, — the appearance of objective phenomena which you get in occupational disease. With the degree of pain of which the patient complained one would naturally expect in like degree the ordinary phenomena that go with neuritis, — either wasting or atrophy of the muscles. None of this was present; there was no history of them. The subjective condition of pain was disproportionate to the objective findings. The doctor believed on Feb. 3, 1915, that the employee could return to work and get along all right, as he had admitted improvement in every way.

Dr. Edwin T. Rollins, who examined the employee at the request of the insurer, testified that in December he found only subjective symptoms; there was complaint of pain and weakness of the muscles. At various examinations there were variations in the sensibility of the arm. The employee had always admitted improvement. About the 30th of December he urged the employee to go back to work; he thought the employee was able to do more than the employee himself thought he could do. His last examination was January 6, 1915, when the doctor thought that the employee was able to resume his employment.

Johannes M. Rodyk expressed a willingness to go back to work if the committee thought he should do so; he felt better than he had, although he still suffered from the condition of the arm.

Louis L. Jacobs, a superintendent of the employer's factory, testified that he hired the employee and knew when Mr. Rodyk had left his employment; he had not applied for work since that time, but if he should at any time Mr. Jacobs would be glad to take him on again if he could do the work required.

The committee of arbitration finds upon all the evidence that the employee, Johannes M. Rodyk, became incapacitated for work by reason of a condition of occupational neuritis on Sept. 8, 1914, said condition being caused by a personal injury which arose out of and in the course of his employment; that the employee was totally incapacitated for work from said Sept. 8, 1914, to March 29, 1915 the date of the hearing, at which time he agreed to resume his former employment; and

that there is due the employee a weekly compensation of $10 from Jan. 5, 1915, the date upon which the insurer stopped the payment of compensation, to March 29, 1915, inclusive, a period of twelve weeks, a total of $120.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

JOSEPH A. PARKS.
AUSTIN P. KAVENEY.

Harold J. Quinlan dissents.

CASE No. 1394.

MARY McLEAN, *Employee.*
LOUIS BROWN, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

ARISING OUT OF THE EMPLOYMENT. EMPLOYEE FALLS DOWNSTAIRS. COMPENSATION AWARDED.

The employee had occasion to go downstairs shortly before her day's work was completed, and fell, receiving an injury to the side which incapacitated her for a period of about seven weeks.
Held, that the injury arose out of her employment.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Mary McLean *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1394 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Thomas F. Boyle of the Industrial Accident Board, chairman, William M. Henry, 101 Washington Street, Salem, Mass., representing the employee, and W. Lloyd Allen, Shawmut Bank Building, Boston,

Mass., representing the insurer, heard the parties and their witnesses at the Town Hall, Danvers, Mass., on Monday, Jan. 18, 1915, at 3 P.M.

J. Edward Carey of Salem, Mass., and John Morrison of Boston, Mass., appeared for the employee and insurer, respectively, as counsel.

The question in this case is whether there was an injury arising out of and in the course of the employee's employment, the insurer claiming there was no injury.

The employee claims that on Friday, July 10, 1914, while in the employ of Louis Brown, she was going downstairs and fell, injuring herself. Her average wage was $6 a week with meals.

The material evidence in the case is substantially as follows: —

Mary McLean testified: —

In July I was employed at Berry's Tavern. I had been employed there about two months. On the 10th of July I was getting through to go home, and had occasion to go down to the basement. As I was going down I tripped and fell to the bottom. I picked myself up the best I could and came upstairs. The help must have all gone to supper, and I remember calling a fellow by the name of Walter Doucette. I said, "Will you please come and open the back gate for me?" so he did. I felt very lame going home, and I did not say anything about it at the time. When it was time for Dr. Moriarty to be in his office I went up and told him I had this fall. My side was sore and I felt very lame; he prescribed for me and I went home. The next morning I went back to work, but I felt sore. I was afraid if I said anything about it I might lose my position, so worked Saturday and got through about 5 o'clock, and went into Mr. Brown's office and he paid me my wages and I went home. Saturday night the pain was very severe. Sunday morning I did not feel that I was able to walk to church. As a rule, there is not very much work to do on Sunday, so I thought I would go up to keep my place and finish out my work. I came home about 2 o'clock. On Sunday morning Mrs. Brown came downstairs and I told her that I fell down the stairs, and she said she was sorry. Monday morning, while waiting for Mrs. Brown to send down her laundry, there were a few pieces left over from Sunday which I did not iron, so I started in to iron them, and I felt the pain so very severe I could not finish my ironing that morning. Mr. Brown came through the laundry Monday morning and I said to him, "Mr. Brown, I fell down your stairs Friday and I got hurt." Mr. Brown turned around and he said, "You will be all right." Mr. Brown walked away and I did not see

him any more that day. I went home Monday morning because I was not able to work, and I fainted. Mary Tracy went home with me. I was laid up about three weeks in bed. I was not able to go back to work until the 4th of October. I injured my left side. My wages were $6 a week and I received my meals. At the time of the accident I was not sick in any other way. A physician had attended me about three weeks before.

While working at St. John's College I had an operation on Feb. 10, 1913, for a tumor. It is true that I entered the hospital in considerable pain and in a very nervous state, with pain principally in the left side and worse at night. Dr. Tucker performed the operation. I went to work at Berry Tavern some time in May. I roomed with my sister, and while I was working at Mr. Brown's I was feeling pretty well and in good health. My sisters came to help me out with the work. The only time I was not able to do my work was two weeks in June, and Mrs. Brown agreed that she would get some one to take my place for that time. Dr. Moriarty performed an operation on me at this time. I returned to work on the 25th of June. Twice I remember my sister coming in to help me, and that was on two Sundays in succession. The stairs I fell on lead down from the laundry. I had finished my work about ten minutes of 6 and had my supper, and from there I went down to the basement and I fell. No one came to my assistance when I fell. I did not tell any one in the kitchen when I fell. It was supper time. When I told Mrs. Brown about it my sister was present. I was the only one who told Mrs. Brown, to my knowledge. I told her I fell the third step from the bottom. Mr. Brown never discharged me. I told my sister to go there until they could get somebody else to take my place, and Mr. Brown sent $1 to me by my sister, but he never told me I was discharged. I knew perfectly well Mr. Brown could not save a job for me until I went back. I worked at St. John's two years, and I was out about three months all told during the time I worked there.

Dr. John Moriarty of Danvers testified: —

I saw Mrs. McLean at my office on the 10th of July. She said she was working in the Berry Tavern and fell downstairs. I prescribed for her. I next saw her on the 13th of July. I examined her at this time. On July 13, on examination, I found she had contusion of the hip and thigh; that is all the external examination presented. She complained of pain in her left hip. I made probably thirteen or fourteen calls. I think it was in May at the time of her operation that I treated her before this time. She had inflammation of the cervix. It was a slight operation, and I told her she would probably be laid up four days. This could not at all have affected her in any way so that she would fall on the 10th of July. These injuries could not be attributed directly or indirectly to the operation. From July 10 I attended her all told about ten or twelve times. She was

not confined to bed all the time, but was not able to work. She complained of lameness and could not walk very far. There is no connection between the operation in May and the accident.

My last visit to the house following the injury was August 5, when I told her I had done all I could. She was sitting up at this time. She had severe contusion and probable injury to the nerve. She could not go to work because she was lame and in pain. A contusion can be both superficial and deep. There were no abrasions or lacerations. I think it was probably deep, — deep enough to affect the nerve.

Louis Brown, proprietor of Berry Tavern, testified: —

Mrs. McLean was employed by me on the 10th of July, 1914. We have stairs leading into the cellar. There are 11 steps, and they are covered with red burlap. I did not get knowledge that Mrs. McLean was hurt until the 17th of July. Her sister gave me the knowledge. Mrs. McLean received $6 a week and her meals, valued at $4 or $5. I did not discharge Mrs. McLean that I know of. On July 17 her sister came and wanted to take Mary's place, and I told her she could not do it. She only worked for me a short time — about six weeks. She had been out six or eight times. Occasionally she would send her sisters to finish up the work if she felt tired. She would do this perhaps once a week or once in two weeks. Mrs. Brown has charge of the girls. I paid Mrs. McLean on Saturday, the day after the accident. She seemed to be just as usual. Mrs. McLean did not at any time make any complaint to me. She might fall downstairs, and if there was no one down there she might lay there for half an hour. If she yelled ten of them would be there. Mere falling might not be heard upstairs. I do not remember Mrs. McLean telling me about this accident. Monday morning she said she was not feeling well, and I said, "Go home and rest."

Mrs. Louis Brown testified: —

I remember that Mary had a fainting spell. It was on Monday morning, and after that fainting spell she went home. She was out Tuesday and her sister substituted for her. Wednesday she and her sister came to work together, and I made inquiries how she was feeling and her sister suggested that we might get somebody to fill her place for a while until she felt stronger. She said, "It isn't surprising. Mary fell downstairs," and I said, "We did not know anything about it, and she could not fall at 6 o'clock without somebody hearing her." So I turned to Mary, and she said she did not fall but wrenched her body falling down. The help are busy with the guests at this time, and the place is not alone at 6 o'clock. She had had an operation and had not been well. I did not discharge Mrs. McLean. My husband was simply getting a substitute until Mary grew stronger. It was about a week from the time she claimed she had

the accident that I knew about it. She had been out quite awhile, and her sister would come in and help her, and I thought she ought to rest awhile. It was not against the rules for employees to go to the basement.

Margaret Johnson, sister of Mrs. McLean, testified: —

I do not remember the day my sister got hurt, I was not there. My sister was in bed for three weeks in July. She fell on Mr. Brown's stairs, going down to the basement. The week after the fall I went to Mrs. Brown, and I said, "My sister was hurt in your employ and she is in bed."

Mary McPhee, sister of Mrs. McLean, testified: —

I cannot remember the date my sister was hurt. I assisted my sister on Wednesday.

Katie Murphy testified: —

I work at the Berry Tavern. I remember Mrs. McLean having a fainting spell in July, and I helped her. I heard that she fell, but I did not see her. It was on a Monday morning and she was not feeling well, and she said she did not feel very well, and I wanted her to stop ironing. She said her side was paining her, and that she twisted herself when she fell. She said something about the cellar stairs.

On this evidence we find that Mary McLean received an injury arising out of and in the course of her employment on July 10, 1914; that her average weekly wages were $6, together with meals valued at $3.50; that she is entitled to reasonable medical services for the first two weeks after the injury; and, beginning on the fifteenth day after the injury, July 24, 1914, she is entitled to the payment of compensation at the rate of $4.75 a week, that is, one-half of $9.50, for a period of seven weeks, all incapacity for work having ceased on Sept. 10, 1914.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

THOMAS F. BOYLE.
WILLIAM M. HENRY.
W. LLOYD ALLEN.

CASE NO. 1395.

FRANK DOHERTY, *Employee.*
COLEMAN BROTHERS, *Employer.*
MASSACHUSETTS BONDING AND INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. BURDEN OF PROOF. TIME RECORD SHOWS THAT EMPLOYEE WAS AT WORK ON CERTAIN DAYS FOLLOWING TIME OF ALLEGED INJURY. EMPLOYEE HAD TESTIFIED THAT HE DID NOT WORK THEREAFTER. COMPENSATION NOT AWARDED.

The employee alleged that he received a personal injury by reason of a strain incurred while he was performing certain work for his employers. He stated that the injury occurred on Aug. 22, 1914, and that he did not again perform any work for his employers. The time record showed, however, that he had been at work for a period of several days after August 22. No other employee had any knowledge of the occurrence of the injury, and no notice was given by the employee to his employers until two months later.

Held, that the employee did not sustain the burden of proof; no compensation awarded.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Frank Doherty *v.* Massachusetts Bonding and Insurance Company, this being case No. 1395 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, N. P. Sipprelle, representing the insurer, and Arthur C. McVey, representing the employee, heard the parties and their witnesses in the Hearing Room of the Industrial Accident Board, New Albion Building, Boston, Mass., Wednesday, Jan. 20, 1915, at 10 A.M.

James Harnedy appeared as counsel for the insurer; the employee appeared unrepresented.

Frank Doherty, age twenty-four, residing at 3 Gore Place, Cambridge, was employed on Aug. 22, 1914, by Coleman Brothers, who were engaged in subway work at Bowdoin Square, Boston. Said company is insured under the act with

the Massachusetts Bonding and Insurance Company. Doherty was employed as a carpenter's helper, at an average weekly wage of $12, and alleged that while loosening a 6 by 8 plank or timber from among several others, in order to fasten it with a chain for the purpose of hoisting, he received a strain of the ligaments of his back, which strain has incapacitated him until the date of hearing.

Doherty testified that he had been working for Coleman Brothers as a helper to the carpenters. On the day of the injury they were making plank forms for the concrete which was being used in the building of the subway, and had sent him down below for a 6 by 8 and 10 or 12 foot long plank. He lifted it from among a few others and then raised it sufficiently to fasten the chain rope around it, so that it could be drawn up. While doing this he felt a severe cramp in his back. It grew worse until, at 5 o'clock, he was obliged to stop work and go home. The next morning he was not able to report for work, and remained abed until the following Tuesday afternoon. About four days after his injury he went to see Mr. Burns, who was the foreman in charge of the work, explained his condition to him, and asked if he could be put on to lighter work. Burns promised to help him and told him to call again. He called on Burns three times, to the best of his recollection, in search of work, but was not given any. About the 19th of September he consulted Dr. Bailey of Bowdoin Street, Boston, who treated him for strain of the back, and to whom he went for treatment seven times. Afterwards, he received only home treatment, which consisted of the application of mustard poultices and the like to the affected part. Has not worked since the injury.

Patrick J. Burns, employee of Coleman Brothers, has acted as superintendent for said company for the past ten or twelve years. Mr. Burns testified that Doherty had not reported his injury to him, and the first he knew about it was probably seven or eight weeks after it had occurred, when Doherty came to him and told him that he had been receiving treatment from Dr. Bailey as a result of his injury of August 22, while in the employ of Coleman Brothers, and that Dr. Bailey had advised him to seek lighter employment. He told Doherty at that

time that he had nothing for him to do; the work was nearing completion, and he was not hiring any more men. Doherty, however, did not specify whether he wanted his regular work or something lighter. He has not seen Doherty from that day — which he felt sure was the Saturday preceding Columbus Day — until the date of the hearing.

Charles F. Quigley, timekeeper in the employ of Coleman Brothers for the past ten years, testified that Doherty came to him in connection with the accident, after he had seen Mr. Burns, — some time during the second week in October, 1914. He reprimanded him for not having reported the accident earlier, so that a report of same could have been sent to the office. During his employment with the Coleman Brothers a similar accident had not occurred, although he thought it was quite possible that Doherty could have strained himself as he stated. It was the custom and rule of Coleman Brothers, when a man entered their employ, to hold back one week's pay, each week in their employ starting on Saturday, so that each employee received his week's wages on the following Friday. With reference to the pay envelope introduced in evidence, and dated the 29th of August, 1914, Quigley testified that Doherty must have worked on the days following the date of the alleged injury, and preceding the 29th, in order to have received a pay envelope on that day.

Dr. Francis D. Donoghue, medical adviser for the Board, examined the employee, and testified that there was no present condition which would indicate that the employee had sustained an injury, although the plausibility of Doherty's story led him to believe that the injury, whether or not it was received in the course of his employment, had, at any rate, been sustained. The lifting described by Doherty was such that if any injury followed, the symptoms and results would have been as stated by him. He further testified that he did not believe Doherty was capable of doing heavy work, his system being weakened by habits of intemperance, cigarette smoking and the like.

Upon request of both parties the books of the said company, containing data between the 22d and 29th of August last, were introduced, and were in direct contradiction of Doherty's testimony that he had not worked after the 22d, entries therein

showing that he had worked some few days after the date of the alleged injury, which accounted for his having received a pay envelope under date of the 29th of August last.

Upon all the evidence the committee of arbitration finds that Frank Doherty did not receive an injury arising out of and in the course of his employment, and is not, therefore, entitled to compensation under the act.

JOSEPH A. PARKS.
N. P. SIPPRELLE.
ARTHUR G. MCVEY.

CASE NO. 1398.

FLORA WADGER, WIDOW OF MANUEL WADGER. *Employee.*
STEVENS MANUFACTURING COMPANY, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DEATH RESULTS FROM THE INJURY. DEPENDENCY. DISEASE. APPENDICITIS. PNEUMONIA. ENDOCARDITIS. CONDITION OF HEMORRHAGIC APPENDICITIS DUE TO INJURY. EMPLOYEE RECOVERS AND RETURNS TO WORK. LATER, PNEUMONIA, FOLLOWED BY ENDOCARDITIS, DEVELOPS AND DEATH ENSUES. DEATH HAS NO CAUSAL RELATION TO INJURY. COMPENSATION NOT AWARDED.

The employee received a personal injury which caused a condition of hemorrhagic appendicitis to develop. This condition was due to a fall from the loom upon which he was engaged in making repairs. In falling the employee struck against another loom and then fell to the ground. The employee also received an injury to the foot, which was lacerated and crushed as a result of having been caught between the dagger and the press-beam of the loom. An operation was performed for the cure of the appendicitis, and necessary surgical treatment was given the injured foot. Later, the employee returned to work, having fully recovered from his injuries. One month afterwards pneumonia developed, followed by a weakness of the heart and lungs, which produced the endocarditis which was the proximate cause of his death. The pneumonia and endocarditis did not arise from a septic condition and were not connected with the injury.

Held, that the death of the employee did not result from the injury.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Flora Wadger, widow of Manuel Wadger, *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1398 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Benjamin Cook, Jr., representing the dependent, and William C. Gray, representing the insurer, heard the parties and their witnesses in Room 35, City Hall, Fall River, Mass., on Saturday, Jan. 28, 1915, at 10 30 A.M.

Frank M. Silvia appeared as counsel for the dependent, and Homer W. Hervey appeared as counsel for the insurer.

This employee, a man twenty-one years of age, on Sept. 11, 1914, received an injury arising out of and in the course of his employment. On said date he fell from a place on the loom on which he was standing in order to fix the machine, and in so falling struck against another loom, about three feet away, and then fell to the ground, his foot being caught between the dagger and the press-beam of the loom, lacerating it and crushing a part of it. He was treated thereafter every other day at the Union Hospital for the injury to the foot. On September 19 he was seized with an attack of appendicitis, and operated on therefor at the same hospital on the same day. The condition was diagnosed at the hospital as a hemorrhagic appendicitis. By the testimony of the doctors who were called in the case it appeared that hemorrhagic appendicitis was usually caused by trauma. The employee was discharged from the hospital on Oct. 12, 1913, at which time there was some pus in the wound. Dr. Perron, who had sent the deceased employee to the hospital to have his operation for appendicitis, took charge of him when he left the hospital, at which time the wound from the operation was not entirely healed. The employee returned to work as a weaver about ten weeks following the injury, Nov. 20, 1913. On Dec. 20, 1913, the employee complained of headache, ache in his ears, lack of strength and

debility in his arms and legs. The next day he visited his father, who lived near by, and felt generally worse on his return home. The next morning he was confined to his bed, and his family physician, Dr. Jackson, called. The doctor examined him in the afternoon of that day, Dec. 22, 1913, and left a prescription for him after diagnosing his condition as that of pneumonia. The employee died a few minutes after the doctor left, before the prescription could be filled.

Flora Wadger, wife of the deceased employee, testified substantially that her husband was a well man before the injury of Sept. 12, 1913; that he had complained of a pain in his right side on the third day after said injury, but not thereafter until he was seized with acute pain in that side four days later, on Sept. 19, 1913, at which time he was operated on for appendicitis; that the wound was not healed on his leaving the hospital, and he was treated by Dr. Perron therefor after he returned home; that he was in the hospital a little over three weeks; that he returned to work about November 20 and worked until Dec. 20, 1913, and that during this time he complained of pain in his side. The witness testified that what purported to be a statement made by her on Sept. 23, 1914, introduced by the insurer, was substantially correct, in which she said that the employee complained only of his foot during the first two weeks following the injury up to the time he was seized with appendicitis. She further testified that some fluid came from the unhealed wound after the operation at the hospital for some time, although she could not state that the fluid looked like pus.

Thomas L. Fallon testified that he worked in the weaving room of the Stevens Manufacturing Company; that the employee's foot was caught between the dagger and the press-beam, and that when he fell he struck a part of the adjoining machine on the right side of his back, and then fell over to the right, on to the floor. A statement signed by the witness, in which he said that the deceased employee fell over backwards striking his back, was introduced in evidence by the insurer.

John B. Rochefort testified that he worked in the weaving room of the Stevens Manufacturing Company; that after the deceased employee had shouted, he, the witness, saw him with

his foot caught between the dagger and the press-beam, and that he, the witness, then went back to his own machine to change his shuttles; that the next time he saw the deceased employee he was seated on the floor, leaning over a little to the right; that he did not see him in the act of falling or striking on the loom.

Dr. A. E. Perron testified that he treated the employee after his discharge from the hospital following the operation for appendicitis, and that the employee had made a good recovery on Oct. 25, 1913, the wound being healed and no signs of sepsis; that in his opinion the appendicitis was caused by the fall from the loom; that the deceased employee had told him when he visited him at the time of his appendicitis attack on Sept. 19, 1913, that when he fell he struck his right side against the adjacent machine. He gave it as his opinion that hemorrhagic appendicitis was usually due to a traumatic cause. He did not see or treat the employee at the time of his death, but on the assumption that he died from pneumonia and endocarditis, as the death certificate stated, he was not able to say that such death was due in any way to the injury or the subsequent appendicitis.

Dr. John P. Jackson testified substantially that he was called, and treated the deceased just before his death; that he wrote out a certificate stating the cause of the death to be pneumonia, endocarditis, primarily endocarditis, said endocarditis being a weakened condition of the heart due to inflammation; that he had been the regular family physician of the deceased for about five years; that he had been somewhat subject to rheumatism; that he had removed his tonsils in June, 1913; that in his opinion the death had no connection with the injury or subsequent appendicitis, and that it was not due to any infection of the heart from pus in the employee's system following the injury to the foot or the appendicitis operation, for the reason that the employee had been recovered apparently from the appendicitis from about Oct. 25, 1913, or before that time, up to the time of his death; that when he saw the employee on or about Dec. 7, 1913, when he came to the doctor's office on a matter of business, he appeared in good health; that there would have been signs of a septic condition and sickness there-

from before his death, if the deceased had been suffering from septicemia caused by any pus in his system; that in his opinion death was not due to septic pneumonia, but to lobar pneumonia contracted from germs caught externally. He also testified that he examined the employee with a stethoscope and otherwise, and that the area of lung affected by pneumonia was about 5 inches in diameter, — a comparatively small area. He further testified that the rheumatism to which the employee was susceptible, and for which he had occasionally treated him during the preceding five years, the last treatment for same being a few days after the accident of Sept. 11, 1913, might cause the condition of endocarditis.

The record of the Union Hospital as of Sept. 11, 1913, when the employee was treated there for the injury to his foot, showed that the cardiac vascular condition of the heart was normal.

Dr. John B. Trainor testified that he performed the operation for appendicitis on the employee; that it was not entirely healed when he left the hospital, and was placed in charge of his physician; that in his opinion the fall and injury of Sept. 11, 1913, and the subsequent operation for appendicitis had no connection with his death on Dec. 22, 1913, in any contributing manner or method. He testified that from what knowledge he had from his medical practice and otherwise he would not say that endocarditis was caused from pneumonia, but that rheumatism might cause it, or any infection, such as pus in the system, or other infections; that hemorrhagic appendicitis was usually caused by a trauma.

Dr. William T. Learned testified that in his opinion the fall and injury to the foot and subsequent operation and sequences had no causal connection with the death of the deceased; that in his opinion the condition of pneumonia and endocarditis were both the result of one cause, viz., by the poisoning from the micro-organisms of the pneumonia germs; that the pneumonia was not caused by sepsis from any pus in the employee's system resulting from injury to the foot or subsequent appendicitis, as was shown to him by the lapse of time after the healing and recovery from appendicitis; that the patient would have been a sick man from sepsis prior to the sepsis attacking the lungs if the pneumonia had been caused by pus in his system, and that it was, therefore, not in his opinion septic

pneumonia; that both the pneumonia and endocarditis were the result of external pneumonia germs poisoning the employee's system and attacking both his lungs and heart, and that the process by which this infection or attack of pneumonia affected the heart was directly and not indirectly through the lungs; and that the heart could be reduced to an advanced weakened condition of endocarditis through the direct attacks of such a pneumonia condition when the lungs themselves had not become seriously affected by the attacks of pneumonia, and death might be caused suddenly by such weakened condition of the heart without the lungs being much affected.

The committee finds that on the weight of the evidence, medical and otherwise, the appendicitis had a traumatic cause through the fall on Sept. 11, 1913, from the machine on which the employee stood, either by striking his body on the right side, close to the appendix, against the adjoining machine, or on the floor, or through straining it in such part, but, that he had well recovered from the effects of the appendicitis by Oct. 25, 1913, when his physician, Dr. Perron, made his last call upon him therefor; that the employee did not suffer after Oct. 25, 1913, from any later infection from pus following either the injury to his foot or the appendicitis; that in the month of his death, viz., December, 1913, shortly before his death he had recovered his normal or apparently normal health, as observed by Dr. Jackson, his family physician; that his death was due to an attack of pneumonia which weakened and affected his heart and lungs, producing the endocarditis which was the proximate cause of his death; that the pneumonia and endocarditis did not arise from a septic condition and were not connected with the injury.

The committee finds, however, that compensation is due the employee's administratrix from the time it was stopped on Oct. 30, 1913, to the time he returned to work after he had recovered from the operation for appendicitis, on Nov. 20, 1913, viz., a period of three weeks, at $6.25 per week, amounting to $18.75, at which time his incapacity resulting from his injury ceased.

DAVID T. DICKINSON.
WILLIAM C. GRAY.
BENJAMIN COOK, JR.

CASE No. 1402.

CHARLES H. HALEY, *Employee.*
SUFFOLK COAL COMPANY, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DISEASE. APOPLEXY. CEREBRAL HEMORRHAGE. EMPLOYEE STRIKES HEAD AGAINST TIMBER. SUSTAINS SHOCK OF APOPLEXY FROM CEREBRAL HEMORRHAGE THIRTY-ONE HOURS LATER. NO CAUSAL RELATION BETWEEN TWO EVENTS. COMPENSATION NOT AWARDED.

The employee was feeding horses from a platform which was situated above the stalls in the stable where he was employed, and as he turned around to take a step he struck his head against a timber which was near by. The blow dazed him somewhat, but he continued to perform his duties, and thirty-one hours later a numbness appeared in his right arm. He has been incapacitated for work since that time, suffering from the effects of the stroke of apoplexy. The weight of the medical evidence showed that, upon the testimony of the employee that the numbness first appeared as above stated, there was no connection between the two events.

Held, that the employee was not entitled to compensation.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Charles H. Haley *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1402 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Leon E. Baldwin, representing the employee, and David J. Maloney, representing the insurer, after being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board on Feb. 17, 1915, at 10 A.M., and at a continued hearing on April 6, 1915, at 10 A.M.

John M. Morrison appeared as counsel for insurer, and E. H. Savary appeared for the employee.

This employee, a man sixty-five years of age, received an injury arising out of and in the course of his employment on Aug. 22, 1914. He was feeding horses from an elevated platform located above the stalls, and while engaged in this work he struck his head against a girder under the roof, thereby sustaining injuries to his head and neck. His average weekly wages were $15. He was employed as a night watchman. The injury happened at about 4.30 A.M.

The employee testified that his head troubled him during Saturday night, August 22, — that it felt as if it were going back; that his head also pained him Sunday night. He first felt pain n his neck when he received the blow; his head ached all day Saturday. He went to work Saturday night about 5 o'clock, but had a bad feeling in his head. He rang in his clock at 6 o'clock that evening and remained in the office all night, leaving for home at 6 o'clock Sunday morning. He slept from 8 to 11 o'clock and then asked his wife to rub him; his wife asked him what was the matter, but he told her he didn't know. The doctor arrived between 10.15 and 11 o'clock; he lost his power of speech and was not able to speak again for nearly two weeks. At this same time his right arm felt as if it were dead. He had never had any sickness before this time except a cold. He stated that Saturday evening he put his coat on the back of his neck and lay on a table, between intervals in his work.

Arnold B. Crosby, superintendent of the Suffolk Coal Company, testified that he saw the claimant on August 24 at his home, and found him partly paralyzed; that he could not understand what he was saying, as his speech was very incoherent; that he called again after two weeks and could understand him much better; that the claimant told him about his accident and the effects early in September; that he, the witness, worked until about Oct. 1, 1914.

Mrs. Haley testified that her husband went to his work as usual in the evening of August 22. He complained of feeling tired and felt unable to go to his work, but felt the necessity of going. He complained of pain in his head and in the back of his neck at the base of the brain. He complained of a severe headache on Sunday morning and asked to be rubbed. She

suggested that they call for a physician, and sent for Dr. Tolman. The doctor said that he would be all right in a little while; she couldn't remember much of what the doctor said at this time as she was too excited, but he suggested having some one treat her husband's nerves. She thought her husband had greatly improved under Dr. Zimmerman's care.

Dr. George L. Walton testified that he had examined the claimant and was given the history of his accident and its effects; that in his opinion the man had a typical hemiplegia from which there had been some improvement, so that he could now use his leg fairly well; that there was still a little weakness in the right side of his face; that his arm was practically useless, he being able to raise and lower the elbow only to a small degree. Upon examining the employee's circulatory system he found his heart normal, possibly very slightly enlarged, the sounds were normal, the arteries rather hard at the wrist and the blood pressure over 200; that he had arteriosclerosis. In the doctor's opinion this man probably had an internal capsule, either thrombus or hemorrhage, as a result of the arteriosclerosis, which is hardening of the arteries; he thought it was a thrombus. It is possible without blows on the head to have a hemorrhage which shows these symptoms gradually; a thrombus means a clotting of the blood; in his opinion there was no causal relation or connection of the accident with the apoplectic stroke or with the incapacity.

Dr. William J. Daly, appointed as impartial physician by the Board, made the following report, which was received in evidence: —

> DEAR SIRS: — Report in the case of Charles H. Haley of 236 Meridian Street, East Boston, kindly referred by you to me as the impartial physician under the act.
>
> Mr. Haley has a right hemiphlegia of the ordinary capsular type. His condition stands in direct causal connection with his accident
>
> W. J. DALY.
>
> DEC. 2, 1914.

Dr. Daly testified on April 6, the date of the second hearing, that he could find none of the medical causes for thrombus after looking carefully, and that a thrombus or embolism would not be caused by such an accident; that it was an impossibility

that the manifestations of trouble which this man had could be due to an injury to the spinal cord up near the top vertebræ if it had been affected by the blow on the head. He thought the blow had no causal connection with the cerebral blood-seepage, as the latter was not manifested until thirty-one hours after he received the blow; if he had been knocked unconscious, or had received a more violent concussion, or had had nausea, he would then have had more definite evidence of a causal connection. His written report, stating that there was a causal connection between the accident and the cerebral hemorrhage which manifested itself on Sunday, Aug. 23, 1914, was based upon his misunderstanding of a statement of the claimant to the effect that the numbness of the arm had first appeared on Saturday morning, Aug. 22, 1914, at about 11 o'clock, that is, six hours and a half after the injury, whereas the fact was, as the claimant intended to state, that the numbness first appeared on Sunday, August 23, thirty-one hours after he struck his head on the timber when he was about to stoop.

The doctor further testified that in his opinion one effect of the employee striking his head on the timber, considering his sclerotic condition, would be to cause a certain degree of cerebral anemia, which would cause reactions and irregularities in the circulation of the blood in the cerebral arteries; and if the cerebral hemorrhage had occurred in about six and a half hours after he had hit his head, as he had first understood was the fact, it would then be his opinion that such irregularities and reactions set up by the blow in the circulation had been a contributing cause of the hemorrhage; but in his opinion the circulation had regained its normal condition in this employee before the hemorrhage came, which was manifested thirty-one hours after the blow.

The claimant at the second hearing testified in answering questions asked him by Dr. Daly that he went to sleep between 8 and 9 o'clock on Saturday morning, and woke about 4 o'clock in the afternoon; that his head felt sore and his neck ached. He went to work at 5 o'clock; he ate a meal before this, but it was less than the usual amount that he ate. His neck felt bad at this time, and his head ached. He then went to work, which was a short distance from his house. His head

troubled him all night. He quit work at 6 on Sunday morning feeling just about the same, but he felt no sensation in his arm or leg and had no trouble walking home. He went to the bakery on an errand and then went to bed about 9 o'clock, but did not rest comfortably, feeling as though something had bumped him. The numbness in his arm first appeared at about 11 o'clock on the morning of Sunday, Aug. 23, 1914.

The committee finds that the employee on Saturday, Aug. 22, 1914, received an injury arising out of and in the course of his employment. His work was that of a night watchman, and his average weekly wages were $15. At the time of the injury, which occurred at about 4.30 A.M., he was feeding horses from a platform which was situated above the stalls, and as he turned around to take a step he struck his head against a timber which was near by. The blow was sufficient to give him great pain, dazing him, but not causing him to fall. He continued to perform his watchman's work at the usual hours, still suffering from a headache, and pain and stiffness in the back of the neck at about its junction with the head. On Sunday, August 23, about 11 A.M., which was about thirty-one hours after he struck his head, a numbness appeared in his right arm.

He has been incapacitated for labor since that time on Sunday, Aug. 23, 1914, suffering for an interval of about two weeks from a certain degree of aphasia, dizziness and pain, and continues to be incapacitated for work as a result of the apoplectic stroke.

The committee finds that at the time of striking his head the employee was in a condition of arteriosclerosis which rendered him more susceptible to the effect of such a blow disturbing and upsetting his cerebral circulation with irregular pressure in the arteries than would be the case with a person in a normal condition of arteries; but that on the weight of all the evidence, medical and otherwise, especially as to the particulars of the blow, and his later symptoms and condition, such arterial and circulatory disturbance in the brain resulting from the injury had ceased a considerable time before the numbness appeared on Sunday, August 23, and that no causal connection, on the weight of the evidence, is shown between the accident

when he struck his head and the apoplexy from a cerebral hemorrhage on August 23, and the subsequent incapacity; and that the insurer is, therefore, not liable to compensation.

DAVID T. DICKINSON.
DAVID J. MALONEY.
LEON E. BALDWIN.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, May 27, 1915, at 2.30 P.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board on the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows and the Board finds that there is no causal relation between the personal injury received by the employee, Charles H. Haley, on Aug. 22, 1914, and the apoplexy from a cerebral hemorrhage on Aug. 23, 1914, and the subsequent incapacity for work resulting from such cerebral hemorrhage; and that no compensation is due the said employee from the insurer under the Workmen's Compensation Act.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1407.

MARY WALSH, MOTHER OF JOSEPH T. WALSH (DECEASED), *Employee.*
NORTHAMPTON STREET RAILWAY COMPANY, *Employer.*
TRAVELERS INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DEATH RESULTS FROM THE INJURY. DEPENDENCY. AVERAGE WEEKLY WAGES. DEDUCTION ON ACCOUNT OF VALUE OF BOARD FURNISHED EMPLOYEE BY HIS DEPENDENT. PRE-EXISTING DISEASE. CONDITION OF CHRONIC INTERSTITIAL NEPHRITIS ACCELERATED BY INJURY. SUCH ACCELERATION HASTENED DEATH BY A PERIOD OF FROM SIX TO EIGHT MONTHS. METHOD OF COMPUTING AVERAGE WEEKLY WAGES INDICATED. EMPLOYEE CONTRIBUTES ALL OF HIS EARNINGS TO MOTHER. LATTER FURNISHES BOARD TO EMPLOYEE. NO DEDUCTION FROM CONTRIBUTION ON ACCOUNT OF BOARD. COMPENSATION AWARDED TO MOTHER.

It appears that the employee received a personal injury which materially aggravated and accelerated a previous condition of chronic interstitial nephritis, and hastened his death in advance of the time at which it otherwise would have occurred as the natural result of such disease by a period of from six to eight months. The employee worked as the opportunity offered, and during the twelve months preceding the date of the injury earned the sum of $742.81. During that period he lost 6.528 weeks' time. The number of weeks remaining after the time lost was deducted was 45.472. The average weekly wages are computed by dividing $742.81 by 45.472, the result being $16.34. All of his earnings were given to his mother, the claimant. The insurer contended that since the employee was furnished board by the dependent, who had other means of support, a deduction should be made from the amount of his contribution, and compensation awarded on the basis of the reduced sum.

Held, that there should be no deduction on account of the furnishing of board to the employee by his dependent.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Appealed to Supreme Judicial Court.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Mary Walsh,

mother of Joseph T. Walsh, deceased, *v.* Travelers Insurance Company, this being case No. 1407 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Thomas F. Ahearn, representing the mother, and Thomas H. Kirkland, representing the insurer, being duly sworn, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Northampton, Mass., Friday, Jan. 29, 1915, at 1 P.M., and Friday, April 30, 1915, at 11.30 A.M.

Henry A. Moran appeared as counsel for the insurer, and Daniel D. O'Brien appeared for the mother.

Joseph T. Walsh, the deceased employee, received an injury on Jan. 29, 1914, while in the employ of the Northampton Street Railway Company. He received a break in his left scapula. His average weekly wages were $16.10, and he received compensation at the rate of $8.05 per week up to March 23, making the total amount received $44.85. He died Aug. 13, 1914, as a result of a cerebral hemorrhage.

The insurer contends that there is no dependency on the part of the deceased employee's relatives, and that the cerebral hemorrhage was not the result of the injury received on Jan. 29, 1914.

The testimony was substantially as follows: —

Mary Walsh testified as follows: —

I am the mother of Joseph Walsh. My husband is dead. I have two children living. Joe was twenty-six years old when he died, and he lived with me; he was my support. On Jan. 29, 1914, he was employed as a conductor by the Northampton Street Railway Company, being employed about three years. On January 29 I saw him when he went to work; he appeared perfectly well. I saw him some time later on the 29th, about 7 o'clock in the evening. He came in earlier than usual. He was very pale, complaining of pain in his head. He went to his room; I followed him and heard him moaning. I went into his room and he was walking around with both hands pressed against his head, and I asked him, "What is the matter, Joe?" and he said, "Mother, I have a terrible headache." His hands were pressed against the back of his head [illustrates]; he was walking around the room. He complained of pain in his back. I touched his back when he was lying on the bed, — I went to turn him over, and he said, "Oh! my back." I bathed his head with witch-hazel, the front and back. He told me the pain was in

the back of his head. He went to see the doctor; the pain was so bad he could not stand it. He returned about 9 o'clock. I do not know whether he had seen a doctor, he did not say; he went to his room and I went after him, and I was with him all night. He complained all night; he did not sleep at all. The next morning he got up about 9 o'clock; he did not eat any breakfast. He stayed in the house for a while and went to see Dr. Collins. He came back to the house after one or two hours. The rest of the day he complained of terrible pain; walked around the room with both hands pressed against his back and against his head. He swayed as if he was dizzy. For the next few days he was very nervous, complained of pain all the time, and slept very, very little. He went away on a vacation to his uncle's in Brooklyn; the doctor told him to go. From the time he came into the house on January 29 until he went away, ten days later, that pain continued; he suffered all the time with his back and head. Two days after the accident he told me all about it. His car was coming down, and when it got to the twin bridges it left the track and struck the bridge. Joe was standing inside the car making up his book, and was thrown against an iron post in the car. He told me he thought the accident would fix him and he would never get out of it. About four days after the accident I was standing at the window and noticed him coming along the street; blood was running down his face from his nose. I brought him in the house and sent for Dr. Collins. When he came back from his vacation he had not improved any — still complained of pain in his back and head. On March 23 he returned to work. He said, "Mother, I am going back to work this morning. I do not feel one bit better, and in fact I feel worse." I said, "Do not go." He looked so pale. He did not seem to have any ambition; he would come home from work and throw himself in a chair. He still complained of pain in his head and back. I saw him spit blood a number of times. He did not rest at all; he would moan in his sleep. He told me that these pains started at the time of the accident. After he went back to work in March he did not work steadily. From July 16, when he quit work, up to July 31 he was miserable, — suffered great pain all the time and was very nervous. On July 31 I saw them picking a man up, and when I went down I saw it was my son. A doctor was sent for, and Dr. Collins found his right side paralyzed, and ordered him sent to the hospital. He was unconscious all the time he was in the hospital. Up to January 29 Joe had no sickness and never complained of pain in his head or back. He weighed 140 pounds. He had been examined for life insurance about two months before and passed the examination. Before the 29th, when he came in from work, he would come up two or three steps at a time, singing or whistling. There were no lumps on his head. I did not notice any marks on his head. Joe was my only son, and I have two daughters, seventeen and twenty-two years old. One is an operator and the other girl does not work. The operator earns between $8 and $9, and she pays me $5 board. I do not do any-

thing else for a living since Joe died. I kept some boarders for a short while before he died; a man and wife and two children paid $15, and another gentleman paid $6, a week. My son paid me about $16; he kept nothing; had only what I gave him. Some weeks he had dues to pay; he belonged to one or two societies. I paid his life insurance for him. He did not smoke and had no bad habits. The daughter that is sickly works once in a while. She worked in the silk mill about two weeks ago, and works probably two weeks in a month, earning between $4 and $5 a week. She gives it all to me. The year previous to my son's death the operator did not work all the time, about half time or a little over, and the other girl did not work at all before the accident. Joe was the main support of the family. I do not do any work myself. My husband died in May, 1911. I began to take boarders the year after.

Lillian Walsh, sister of the deceased employee, testified as follows: —

I am seventeen years old. Before Joe was hurt I never worked, — never brought anything into the family. Joe brought in the money that supported me. About the time Joe was hurt I was going to the Smith Agricultural School. I did not have to pay at the school. I helped my mother about the house. I remember when he was hurt that he complained of pains in his back and head. I never heard him complain before the accident. I heard him say that he thought the accident finished him, and that the pains started at the accident. Before the accident I never saw Joe sick.

William S. Sheehan testified as follows: —

I am a conductor on the Northampton Street Railway, and have been for eight years. I knew Joseph Walsh. I should say, roughly, that he had worked for the Northampton Street Railway Company three years, Williamsburg line mostly. I recall the accident that happened. I saw Joseph after he came from the hospital. From what the railwaymen told me, the car left the track and ran into the side of a cement bridge. It took off about 8 or 12 feet from the side of the bridge. I talked with him about the accident. He said that he was not the same, and he did not look the same. He had a very haggard look. He did not have the haggard look before the accident. He looked to be considerably reduced in weight, — no color. He looked like a man that was about done for. He said he thought the accident had fixed him, all right. Before the accident he appeared to be in normal health. He was not a big fellow; he was built about as you would expect a man of that height. From what I knew he appeared to be in pretty good health. He had a night Williamsburg run. It is a hard run. Before the accident I never heard him complain of pain in his back or head. He was a very

lively sort of a fellow, — a fellow that would engage in wrestling and fooling with the men. In fact, I fooled with him myself a whole lot. He never mentioned any particular pain, just his health in general. He said he thought the accident had fixed him. I would think working three, two and five days a week very unusual. The actual figures show that the men average about twenty-five to thirty days a year off.

John D. Whalen testified as follows: —

I am a conductor on the Northampton Street Railway, — will be there six years next May. I knew Joseph T. Walsh for about three years. I recall the accident that happened in January, 1914. After the accident he said his back troubled him, and he had not felt well since the accident. He seemed to be in good health before the accident. After the accident he did not seem to keep up with the rest; he used to lag behind. He seemed to lose flesh.

Marion Kane testified as follows: —

I am a nurse at the Dickinson Hospital. I knew Joseph Walsh about a year. I recall the accident that happened in January. I remember after the accident that he complained of pain. He said to me that he thought he would never get over it. I knew him before the accident; he worked steadily and appeared to be in good health. He said the pains started about the time of the accident. He appeared to be a young man who was energetic, normal in weight and healthy. After the accident he lost flesh and his color changed. He was unconscious practically all the time that he was at the Dickinson Hospital. He asked for a drink. He did not say anything about the accident. I noticed a very decided change in him after the accident from his condition before. He told me he thought the accident had fixed him.

Michael J. Comuskey testified as follows: —

I live in Northampton. I was a chum of Joe's. I knew him about two and one-half years. I would see him two or three times a week. I saw him two or three days after the accident. I met him on the street, and I said, "You are not looking well," and he said, "If I am not looking any better than I feel, I must look pretty bad," and he told me about the car jumping the track. He said he got hurt pretty bad, worse than he thought at first. I asked him how it happened, and he explained it to me, that he got knocked up against the iron, and he said he thought he hurt his back, that he was spitting blood and did not think the doctor could do him any good. After I first met him until he died I saw him all the time. Quite often he would stop on the street with pains in his back and head. Before the accident he was a lively young fellow. I

never heard him complain of pain before the accident. He told me he thought he would never get over the effects of the accident. After the accident he was not the same fellow; he did not fool or jolly. He was thin, pale and had no color; one would never know he was the same fellow. He said he thought the pain was going to kill him. He said the pain came in his head and went through his body.

Dr. William J. Collins testified as follows: —

I have been practicing in Northampton for seventeen years. I am a graduate of Harvard, and have been on the staff of the Massachusetts General Hospital and the Dickinson Hospital, and have studied in Europe. I know Joseph Walsh. I should say I became acquainted with him about four years before his death, at the time of his father's death. I went to see his father with Dr. Hayes in consultation. At that time he was about twenty-one or twenty-two. On July 31 of last year I was called to the Walsh home in Florence, and when I got there found this young man in bed and unconscious. I found one side paralyzed. The next day he was sent to the hospital, and he remained unconscious, and died on the 14th of August. I performed postmortem at his home, and I found that this young man died from hemorrhage of the brain and interstitial nephritis, a disease of the kidneys. In February he came to my office and complained of pain in his back and head, and told me he had been in an accident. I found his shoulder blade strapped. He came to me for the results of the accident. From Feb. 3, 1914, I saw him daily for three or four days, and several times between until the 21st of March. I told him he should take a vacation. He was nervous. Before February 3, with the exception of the time he came to me after his father's death, I had never treated him. I had seen him on the street and there was nothing to indicate that he was in poor health. He had the appearance of being in good health.

I saw him last on the 21st of March, and the pains continued all that time. In my opinion the condition of the kidney caused the cerebral hemorrhage. I would say the first big cause of hardened artery was old age, the gout, lead poisoning, overeating, hereditary, muscular strain and interstitial nephritis. It is true that cases of chronic nephritis are often due to accidents. I would say that trauma or injury was an adequate cause to bring about this condition. I consider the accident the big cause that brought about this condition. I discovered no other cause. The usual signs of interstitial nephritis are, in my opinion, breathlessness, feeling of general weakness and anemia. It is said in Dr. Dickinson's book that, after having examined a great many cases, he finds that chronic interstitial nephritis lasted about six months. This disease is a very peculiar one; people will have it for twenty years, but usually the older people, later in life, and then again it will be all over in a short time. A man that has this shows signs, — he is breathless, anemic; he

cannot run upstairs. I had a case of a man who had fallen from an apple tree, injuring his back, — a good healthy man for sixteen years previous, and he died with interstitial nephritis, like this man. It is not unusual not to have visible marks on a man suffering pain such as this man did. I have seen a man with a fracture at the base of his skull without any mark. The kidneys are higher than the ordinary person thinks, about three or four inches below the shoulder blade. I have the kidneys and brain of the dead man at my office. The kidneys are contracted about two-thirds or thereabouts, which shows the man was suffering from interstitial nephritis. In reference to the kidneys there were a few minor cysts. I knew this young man and saw him almost daily before the accident, and he appeared to me to be healthy and strong. I consider the injury to be the big thing in the case.

Dr. M. E. Cooney, Jr., testified as follows: —

I am a practicing physician in Northampton, and I treated Mr. Walsh at the time he met with the accident under date of January 29. I found he had a fracture of the left scapula. I do not remember if he complained about his head; if he did, he did not lay any stress on it. There were no marks on his back below this broken scapula. I knew him informally before the accident by riding on the car. I treated him January 30 and 31. I told him I would not want to see him unless new symptoms appeared, and perhaps six or seven days after the last time I saw him in the office I met him on the street, and I asked him about it, and he said it seemed to be all right. And I asked him if he had the straps on, and he said, "Yes," and I said, "Take them off after a few days." I did not consider the injury necessitated calling at my office every day. He came in about the injury to the shoulder; he did not lay any stress on pains in the head. The pain was high up in the shoulder. I had never treated him before. There was very little swelling when I put the straps on; it may have swollen after, — quite possible. I think he came to my office alone. He complained of tenderness; most of it was localized in one spot. He complained of it right on the shoulder blade. He came to see me about that one particular pain in the shoulder, and I strapped that up. I did not know whether he had any internal injury or not. If he had a continuation of pain from the date of the accident right along for six or seven weeks I should think it might be some indication of internal injury. You get pain at the base of the brain from back of the head from neurasthenia. He might have been nervous on account of the accident. I had him stripped to the waist. I saw no contusions on the body.

At the continued hearing, Dr. M. E. Cooney, Jr., further testified as follows: That if, at the postmortem examination, the kidneys were found to be shrunk to one-third the normal

size, and a microscopic examination disclosed the presence of scars, and the brain showed a rupture of the middle cerebral artery, he would say that was the result of marked chronicity of nephritis; that if the young man was injured and returned to work, and worked with more or less regularity, he would say the accident of January 29 had no effect after the shock was over, — no permanent effect on the blood pressure; that he would expect the effect of the shock on blood pressure to show at the time of the accident or immediately following; that from what he had read in reference to the examination of the specimens he would say that the disease progressed as ordinary cases of nephritis usually do; that chronic interstitial nephritis has been known to run several years, — it all depends upon the care the patient takes of himself; that in his opinion the accident did not aggravate the nephritis condition; that he does not think the accident shortened his life any; that if a man had a shock that caused a circulatory disturbance, showing no noted effect at the time, in his opinion if it did not give any noted effect at the time there would be no permanent effect; that the man would have lived only a short time, from six months to a year, if there had been no accident.

Dr. Edward W. Brown testified as follows: —

I am a practicing physician and surgeon in Northampton. I was present at the postmortem. I saw the kidneys and brain. The condition of the kidneys was chronic interstitial nephritis in an advanced stage in both kidneys. They were smaller, from one-half to two-thirds of normal size, and would indicate that the disease was of long duration. I am familiar with interstitial nephritis, — most cases are of years' duration. A pure chronic nephritis exists for a long time. Interstitial nephritis just diminishes the kidney by destroying some of it. Until a good deal more than one-half of the substance has gone it would give no trouble at all. A great deal of tissue had been destroyed. I would say this condition existed longer than from the 29th of January to the 13th of August. I thought so at the time he had a nosebleed, three days afterward. It could not have anything to do with his accident and I think it shows that he had blood disease. He had headaches. I think those were kidney headaches. I did not know that there was such a thing as traumatic interstitial nephritis. It takes a long time for cysts to develop; it must have taken several years to reach the condition I found it in. I have read about traumatic interstitial nephritis since I heard of this case.

There were no scars on these kidneys. I agree that trauma may cause a certain nephritis, — not in this case. I determine how long it has been going on from the symptoms. When the symptoms show, I know it has been there a long time. I know it has been present a long time from the knowledge of how it comes on. If he had Bright's disease I should say that an accident might accelerate it — might lower his resistance so it would go along quicker. I should think it might diminish his chance at life to go through a thing like that. I do not think an injury would affect the kidneys, but it would lower the resistance and give the disease a better chance to go on. It is perfectly logical that it would increase by nature; it is very insidious at first, but magnifies as it goes along.

At the continued hearing Dr. Brown testified as follows: That if the kidneys were shrunk to one-third normal size he would say that that condition was of long duration; that if a man who was suffering from interstitial nephritis received a shock, and if there was any effect on the blood pressure, he would expect it to manifest itself at once; that there was nothing about his illness any different from any other case of interstitial nephritis; that a man may live with this disease from childhood, and it would not manifest itself until six months before death; that it is very doubtful that the accident had any effect; that he saw the kidneys and brain and they showed the ordinary progress of this disease; that he would not think the kidneys degenerated rapidly, but there might have been a rapid degeneration of his physical condition.

The following report from Dr. Timothy Leary, appointed by the Industrial Accident Board as impartial physician to examine the exhibits and give his medical opinion upon the evidence submitted, was received in evidence: —

FEB. 26, 1915.

Received, in a small jar, brain and kidneys from Arbitration Case No. 1407, Joseph T. Walsh. Autopsy Feb. 3, 1914, by Dr. W. J. Collins of Northampton, Mass. Organs delivered by William N. Scully, claim adjuster, Travelers Insurance Company.

The kidneys are small, combined weight (fixed in formalin) 115 grams (normal, 300 grams plus). Capsule peels in the fixed organ with some difficulty from a coarsely granular surface. Cortex measures from .2 to .4 centimeters (normal, .5 to .8).

The brain weighs 1,520 grams (fixed in formalin). A brain of apparently normal size had been preserved in a small jar in formalin, the jar compressing markedly the anterior portions of both cerebral lobes.

On left there appears a disorganization of frontal lobes about a mass of hemorrhage in the superior frontal sulcus running backward, from apparently junction of convexity with base, for a distance of 12 centimeters. The anterior portion of middle frontal gyrus, from junction of convexity with base, is missing; from its appearance has broken away or has been taken away for examination. Incision into this mass discloses clot filling the pia arachnoid in anterior portion of mass with very superficial hemorrhage into surface of brain. The pia arachnoid together with gray matter has been removed, either by superficial dissection with knife, or else by old destruction of gray matter over the anterior half of middle and inferior frontal lobes. Incision into the mass of blood over posterior half of middle frontal gyrus discloses hemorrhage into and disorganization of surface in places to a depth of 1 centimeter. Incision into base of brain discloses hemorrhage which includes the external capsule and claustrum anteriorly; posteriorly includes the internal capsule together with the posterior portion of the caudate nucleus with apparent disorganization of ependyma of left lateral ventricle over its inferior surface. The ventricle, however, contains no clot. There is flattening of convolutions bilaterally, but how much of this is due to compression within a small jar is a question. The vessels at the base of brain are not remarkable.

After a considerable time spent in microscopic examination of the frontal lobes of brain, I concluded that the appearance here was probably due to postmortem changes, produced after the brain was jammed into the small jar and covered by an insufficient amount of fixing fluid (formalin). I endeavored to obtain some confirming information from Dr. William J. Collins, but was rewarded by a letter furnishing complete information about everything except the brain.

The brain evidently showed a typical basilar hemorrhage from the middle cerebral artery at postmortem. The blood had ruptured into the ventricle which had been laid open by Dr. W. J. Collins. Crowded into the jar the incompletely preserved blood had been pressed into the pia arachnoid and cortex, producing the artifact I have described.

Kidneys. — Microscopical examination discloses hyaline glomeruli in large numbers imbedded in hyaline connective tissue beneath the capsule of organ. The projections above surface are made up largely of dilated tubules; the depressions between are made by hyaline scar tissue which has contracted. Hypertrophied glomeruli are found in some numbers in the deeper portions of cortex which show the smallest amount of connective tissue. The pelvis is normal.

Opinion. — The kidneys show a high-grade chronic interstitial nephritis with marked destruction of kidney substance. The type of kidney corresponds closely to that met with in interstitial nephritis with a long history, *i.e.*, the chronic form which has existed for years, rather than the more acute diffuse forms with a history lasting only over a period of months. Absolute conclusions with reference to this are impossible, however, the patient's age upsetting calculations to a marked degree.

The Brain. — The brain showed evidently a typical cerebral hemorrhage with rupture into ventricle.

It is my opinion that deceased was suffering from chronic interstitial nephritis at the time of his accident. It is my opinion that the accident would lead to aggravation of this established condition and hasten his death. His life would have been terminated by an upset in his circulatory system inevitably, even if the accident had not intervened. When this would have occurred is a matter of speculation. The natural prognosis would be "a matter of months rather than years."

TIMOTHY LEARY.

APRIL 3, 1915.

In the case of Joseph T. Walsh *v.* Northampton Street Railway which I reported to you, my opinion is based on the following: The kidneys received by me were shrunken to about one-third normal size and weight. Such a degree of shrinkage indicates a process of marked chronicity, not something of recent origin. The microscopic examination of the kidneys in this case confirms this judgment. The usual form of chronic nephritis which is met with in young men, who die shortly after the onset of the disease, is a more diffuse type of nephritis, the kidneys rarely showing a shrinkage beyond one-half their normal weight. I therefore concluded that the nephritis was present in this case at the time of the accident.

The physical violence at the time of the accident and the mental stress following the accident would tend to lead to increased blood pressure and add to the burden thrown on kidneys already inadequate to do normal work. I therefore concluded that "the accident would lead to aggravation of this established condition (nephritis) and hasten his death."

I stated as my opinion that his life would have been terminated inevitably by an upset in his circulatory system because the termination of chronic interstitial nephritis is practically always through circulatory disturbances, — uremia with edema of the brain, secondary heart hypertrophy with a terminal break in compensation, cerebral hemorrhage.

The prognosis in chronic interstitial nephritis in a young man is for a short life, a matter at most of months. If this man had chronic interstitial nephritis at the time of his accident, Jan. 29, 1914, and died Aug. 13, 1914, six and one-half months later, it is my opinion that he might have lived several months, perhaps six or eight at most, if the accident or other agency producing physical or mental stress had not intervened.

TIMOTHY LEARY.

The committee finds on the weight of the above evidence that on the 29th of January the employee, a man of twenty-six years of age, received an injury arising out of and in the course of his employment; that at this time he was, and probably for several years had been, in a condition of chronic

interstitial nephritis; that no symptoms of the disease had been outwardly noticed, or caused him any suffering or interfered with his working ability, which was that of an average man. The committee finds that this injury caused an aggravation of this established condition of nephritis, and hastened the natural termination of the disease by a cerebral hemorrhage on July 31, from which he died on Aug. 13, 1914; that his life would have been terminated by an upset in his circulatory system inevitably, due to the disease if the accident had not intervened. The committee finds on the weight of the evidence that the deceased employee would have lived several months if the injury with its physical and mental stress had not intervened. This added period to his life would have probably been from six to eight months at the most, although possibly it might have been some longer. The committee therefore finds that the injury materially hastened and contributed to his death on Aug. 13, 1914.

The committee finds that the deceased turned over to his mother, Mary Walsh, all his wages from week to week, and that she with this money, aided by some earnings contributed by a sister of the deceased, and with some money paid for a short time by some boarders, supported herself and the deceased employee and his two sisters. Nothing had ever been said by the deceased and his mother in regard to the deceased paying board, and the committee finds there was no contract, either expressed or implied, by which he was to pay or owed her board, and that, as he contributed towards her support his whole earnings, she is therefore entitled to weekly compensation of $8.05, being one-half his average weekly wages of $16.10, for a period of three hundred weeks from Jan. 29, 1914, the date of the injury, less five and four-sevenths weeks, during which the employee was paid compensation by the insurer during his lifetime, said remaining period for which said Mary Walsh is entitled to compensation being two hundred ninety-four and three-sevenths weeks.

Counsel for the insurer requested the following rulings and findings, which are given so far as they are consistent with the above findings and decision, and denied so far as they are inconsistent therewith, the first ruling requested being expressly granted.

Insurer's Request for Rulings.

1. The burden is upon the petitioner to prove by a preponderance of evidence that the death of Joseph T. Walsh resulted from the accident of Jan. 24, 1914.

2. If the committee find that the life of Joseph T. Walsh would have been terminated by an upset in his circulatory system inevitably, even if the accident had not intervened, then the accident was not the proximate cause of his death.

3. If the committee find as a fact that the kidneys show a high-grade chronic interstitial nephritis not of recent origin, and that the brain shows a cerebral hemorrhage with a rupture into the ventricle, then prior to the accident of Jan. 24, 1914, the deceased was suffering from a disease which would have resulted in his death some months after the accident, even if the accident had not happened.

4. On all the evidence, and on the report of Dr. Leary's examination of the brain and kidneys of the deceased, and his conclusions based on such examination, the petitioner cannot recover.

THE TRAVELERS INSURANCE COMPANY,
By HENRY A. MORAN,
Attorney.

DAVID T. DICKINSON.
THOMAS F. AHEARN.

Thomas H. Kirkland dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, June 3, 1915, at 10.45 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

Excepting evidence by H. J. Campbell, treasurer of the Northampton Street Railway Company, as to the earnings of the employee, no new evidence was introduced, the case being decided by the Board upon this evidence and the report filed by the committee of arbitration, said evidence and report containing all the material testimony pertaining thereto.

The evidence of H. J. Campbell shows that during the twelve months preceding the date of the injury the employee earned a total of $742.81 and lost 6.528 weeks' time. The number of

weeks remaining after the time lost is deducted is 45.472. The average weekly wages are computed by dividing $742.81 by 45.472, the result, $16.34, being the average.

The evidence shows and the Board finds that the employee, Joseph T. Walsh, received a personal injury arising out of and in the course of his employment, on Jan. 29, 1914; that said personal injury materially aggravated and accelerated a previous condition of chronic interstitial nephritis, hastening his death in advance of the time at which it otherwise would have occurred as the natural result of said nephritis by a period of from six to eight months; that the employee earned an average weekly wage of $16.34, which he contributed to the support of his mother, Mary Walsh, who was partially dependent upon his earnings for support; that the employee, Joseph T. Walsh, lived with his mother and received support from her; and that there is due Mary Walsh, mother and partial dependent of the employee, a weekly compensation of $8.17 for a period of three hundred weeks from the date of his injury, Jan. 29, 1914, less the weekly compensation paid the employee for a period of five and four-sevenths weeks during his lifetime.

The insurer raises exactly the same question in this case as that involved in the case of Daniel T. Keefe *v.* The Massachusetts Employees Insurance Association, which has been taken by appeal to the Supreme Judicial Court and has not been decided to date. This is the question as to whether or not, in the case of an employee who has attained his majority, the insurer is entitled to a deduction on account of the support furnished the deceased by his dependent.

The Board rules, on this point, that the insurer is not entitled to a deduction from the amount contributed by the employee to the support of his mother on account of support furnished him. There was no understanding or expectation that board should be paid, nor any legal liability on the part of the employee therefor to his mother. The relation was not that of debtor and creditor, but of family help and dependency. The Workmen's Compensation Act, Part II., section 5, provides that if the employee leaves dependents only partially dependent upon his earnings for support, there shall be paid such dependents a weekly compensation equal to the same proportion of the

weekly payments for the benefit of persons wholly dependent as the amount contributed bears to the annual earnings of the deceased at the time of the injury.

No provision is made for any deduction on account of the value of the support furnished to the employee by the dependent. The statute provides explicitly that the dependent shall receive a weekly compensation based upon the proportion contributed of his average weekly wage. In this case the employee earned an average weekly wage of $16.34, and contributed all of that sum to the support of the dependent. Since the employee contributed his entire earnings to his partial dependent, the said dependent is entitled to "the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed bears to the annual earnings of the deceased," that is, to 100 per cent. of one-half of $16.34, which is $8.17 weekly for the statutory period.

FRANK J. DONAHUE.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE NO. 1415.

ABRAHAM LESSER, *Employee.*
WILLIAM FILENE'S SONS COMPANY, *Employer.*
MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. LARKING. INJURY AS A RESULT OF BEING STRUCK IN THE EAR BY BOX THROWN BY FELLOW EMPLOYEE NOT COVERED.

The employee worked in the shipping room, and his duty was to take parcels off a moving apron and place them in boxes for the various districts for which they were destined. While stooping down to pick up a parcel from the floor he was struck in the ear by a box thrown by an employee in the same room whose duties did not embrace the handling of parcels.

Held, that the injury did not arise out of the employment.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Abraham Lesser *v.* Massachusetts Employees Insurance Association, this being case No. 1415 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, James J. Gaffney, 408 Pemberton Building, Boston, Mass., representing the employee, and George E. Morris, 101 Milk Street, Boston, Mass., representing the insurer, heard the parties and their witnesses in the Board Room of the Industrial Accident Board, New Albion Building, Boston, Mass., Wednesday, Jan. 27, 1915, at 10 A.M., and on continuance in the Hearing Room of said Board on Monday, Feb. 8, 1915, at 2 P.M.

John W. Cronin appeared as counsel for the insurer, and Jacob Wasserman appeared for the employee.

The employee claimed that as a result of being struck in the ear by a box thrown by a fellow employee of William Filene's Sons Company, on Sept. 3, 1913, he was totally incapacitated for six or seven weeks, and since then — up to the time of the hearing — has been partially incapacitated, which partial incapacity will continue for some time.

The evidence of the boy's physician, Dr. Benjamin Parvey, and the report of the impartial ear specialist, Dr. H. J. Inglis, who examined Lesser in December, 1914, at the request of the Board, were to the effect that an accident such as he described might rupture his eardrum, causing the immediate symptoms of which he complained.

Dr. Francis D. Donoghue, advisory physician of the Board, believed that such a theory was wrong in regard to this case, inasmuch as the report of the Massachusetts Charitable Eye and Ear Infirmary showed that the eardrum was not ruptured by the blow, but by the operation of paracentisis, performed on Sept. 4, 1913, and that Lesser was then suffering from an acute abscess of the ear which had taken some days to develop.

There was evidence tending to show that the boy's employ-

ment was casual, also as to the extent of his incapacity, all of which, including the medical testimony, is irrelevant, in view of the testimony as to how the accident happened.

Lesser testified that it was his duty to stand beside a long moving apron on which bundles came downstairs, and take the bundles off and place them in boxes for the various districts for which they were destined. Two other sorters were employed with him on this work. The sorters were not supposed to throw the bundles, but sometimes did so. On the day he was hurt he had stooped to pick up a bundle which had fallen to the floor, and while he was in a stooping position a square, cardboard box struck him in the right ear. It "came with an awful bang," and the blow made him dizzy.

He turned around and saw one Leo Robinson, an employee, dropping his head. Robinson had thrown the box right at him, and was not throwing it into a basket. It was not part of Robinson's duty to throw bundles into the boxes, as he was not employed as a sorter, and it did not happen while he was throwing into the boxes. He complained to the foreman that Robinson had struck him, and was told to go back to work, that he had started the argument. There had been no argument. Robinson had thrown it at him for fun or some other reason.

This evidence clearly takes the case outside the Workmen's Compensation Act, which is intended to compensate employees only for personal injuries arising out of and in the course of their employment. To arise "out of" the employment the injury must come as a natural incident to such employment. An act done by some person who happens to be in the same employment, and which has no relation to that employment, but was a wrongful act and was intended to be a wrongful act against another person in the same employment, is not within the scope of the employment as part of the risks of the employment. The act does not provide an insurance against everything that may happen to the workman while he is employed. The injury must be one "arising out of" his employment. (Armitage *v.* Lancashire & Yorkshire Ry. Co. (1902), 2 K. B. 178; Clayton *v.* Hardwick Colliery Co., Ltd. (1914), W. C. & Ins. Rep. 343; Fitzgerald *v.* Clark & Son (1908), 2 K. B. 796; Blake *v.* Head (1912), 5 B. W. C. C. 303; Wilson *v.* Laing

(1909), 2 B. W. C. C. 118; Baird & Co., Ltd., *v.* Burley (1908), 1 B. W. C. C. 7; Falconer *v.* London & Glascow Eng. Co. (1901), 3 Fraser, 564.)

The committee of arbitration finds, therefore, that the claimant did not receive an injury arising out of and in the course of his employment, and is not entitled to compensation.

FRANK J. DONAHUE.
GEORGE E. MORRIS.

James J. Gaffney dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties in the Hearing Room of the Board, New Albion Building, Boston, Mass., on Thursday, March 11, 1915, at 10.30 A.M., and affirms and adopts the decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that the employee, Abraham Lesser, received a personal injury by reason of a blow from a cardboard box which was thrown at him by a fellow employee in a spirit of fun, or for some purpose having no connection with his employment.

The Industrial Accident Board finds upon all the evidence that the personal injury received by the employee did not arise out of and in the course of the employment, and that therefore he is not entitled to compensation under the statute.

The requests for rulings of the employee, hereto attached, are refused in view of the Board's finding that the personal injury received by the employee did not arise out of and in the course of his employment.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

Plaintiff's Requests for Rulings.

The plaintiff respectfully requests that the following rulings be made: —

1. That upon all the evidence, as a matter of law, the plaintiff is entitled to compensation under the Workmen's Compensation Act, and that at the time he was injured his employment was not casual.

2. That the employee is entitled to compensation for partial disability from the time of his injury up to the present date and until the expiration of the time, as provided for in the act.

3. That the said employee is entitled to the difference between what he was earning at the time of the injury, namely, at the rate of $9 per week, and what he was able to earn since that time.

4. That an operation is necessary in order that the employee shall be able to perform his daily occupation with the same ability and vigor that he was able to perform before the accident, and consequently is entitled, in addition to his compensation, a reasonable sum to defray the expense of such an operation.

HORBLIT & WASSERMAN.

CASE NO. 1418.

ANTONIO VININO, *Employee.*
FRED T. LEY & CO., *Employer.*
CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. NOTICE OF INJURY. INSURER DECLINED TO PAY COMPENSATION ON GROUND THAT EMPLOYEE HAD NOT GIVEN WRITTEN NOTICE OF INJURY. EVIDENCE SHOWS THAT INSURER, SUBSCRIBER AND LATTER'S AGENT HAD NOTICE AND KNOWLEDGE. STATUTE PROVIDES THAT WANT OF NOTICE SHALL NOT BE A BAR TO BENEFITS IF IT BE SHOWN THAT INSURER, SUBSCRIBER OR AGENT HAD KNOWLEDGE OF INJURY. COMPENSATION AWARDED.

The employee received a personal injury under circumstances which prevented other employees from witnessing same. He reported the injury, however, promptly after its occurrence, asking a fellow employee to inform the foreman

that he was unable to work. During the month following the injury he called at the office of the subscriber and asked the foreman to report it. He also asked the superintendent to report the injury. The employee's physician advised a representative of the insurer of the occurrence of the injury and urged the insurer to report it. The employee was unable to write or speak the English language, and evidently did everything possible to get knowledge of his injury to the proper persons. The insurer refused compensation chiefly on the ground of want of written notice of the injury.

Held, that the employee's rights were preserved, and that he was entitled to compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Antonio Vinino *v.* Contractors Mutual Liability Insurance Company, this being case No. 1418 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, representing the Industrial Accident Board, chairman, Richard M. Walsh, representing the employee, and William J. Cronin, representing the insurer, heard the parties and their witnesses at the Board Room, New Albion Building, Boston, Mass., on Monday, Jan. 11, 1915, at 10 A.M., continuing on Tuesday, Jan. 19, 1915, at 4 P.M., and Friday, March 5, 1915, at 2 P.M.

Antonio Vinino, the employee, claimed to have received a personal injury arising out of and in the course of his employment on Oct. 7, 1914; that while trying to remove a stone with a pick the pick slipped and caused him to fall, and he struck on his back on the edge of the ditch. He has been incapacitated for work to the date of the hearing. No compensation was paid, the insurer contending that the employee did not receive an injury as claimed. It was agreed by the attorney for the employee that all incapacity for work ceased as of this date. The average weekly wages were $12.

Antonio Vinino, through an interpreter, S. R. Della Sala, testified that he worked one day before the accident for Fred T. Ley & Co., and was hurt about half past 11 on the second day; that he was digging in the ditch and found a large stone, and in trying to remove it he put one end of the pick under it and pressed with his foot on the other, and the pick slipped and he fell against the ditch and then lengthwise into the ditch.

He did not see any rocks that he struck against; he did not look. He asked Santo Rentoni what time it was, and when he found it was almost 12 o'clock, he thought he would stay until noon, and when 12 o'clock came he asked Rentoni to tell the boss that he was hurt, and he went home; he did not go to the timekeeper or foreman himself. He saw Dr. St. Angelo the next day; a person took him to the office on Salem Street, and then Dr. St. Angelo came to his house; he saw him three or four times. He suffered pain in the small of the back; he had never had any trouble before in the back. Then he went to the Massachusetts General Hospital where "they plastered him all over the body." The hospital record showed that he was treated in the out-patient department from Jan. 5 to Jan. 8, 1915, for a pathological process of the spine. The ditch was about 2½ to 3 feet wide and about 4 feet deep. He told Dr. St. Angelo just what he had testified to here, — that he was injured at his work and of the manner in which he was injured. The doctor told him that he would telephone to Fred T. Ley & Co. and also to the insurance company.

Santo Rentoni testified that he had worked for Fred T. Ley & Co. with the employee, and that the latter worked one day and a half and stopped work because he said he was hurt; he did not see him get hurt, although he worked a little way from him. The employee had told him he was removing a stone, and that the pick slipped and he fell on the edge of the ditch; it was about half past 11 when he told him, and when he left he asked him to tell the boss that he was hurt. He told the boss, the one they called Rosello on the job; he did not know that his name was Rosello; he gave orders to the men. The employee told him that he was coming back to work, but did not say when. Vinino said that he was going home, as he had hurt himself.

D. Tomasso testified that he was working for Fred T. Ley & Co. with the employee; he did not see him get hurt, but the employee told him that he was hurt.

George Alexander Dupont testified that he was timekeeper for Fred T. Ley & Co. on that job; he did not know the man by sight; he identified him by his check number only. It was his duty to check the men four times a day, about 9, 11, 1.30 and

2 o'clock. He had this employee down for October 6, a full day; his records do not show that he was there on the 7th of October; he has not checked him at all; he did not know he was injured. The work was digging work, not blasting; it was mostly filled land and swampy, — easy digging. He did not know about the claim of accident until October 28. The employee had come to the office with an interpreter and wanted him to make out an accident report of this injury; not knowing anything about it, Dupont said he could not; he did not recognize the employee. Later in the day he was advised to call up the Contractors Mutual Liability Insurance Company and to tell them about it. He was advised by the company not to make out a report until hearing from them. Mr. Thompson, the superintendent, was present and heard the conversation with the employee. He kept the time of 70 or 80 men, scattered up and down for five or six hundred feet. They did not report to him but went right to work, and he got around as soon as he conveniently could and put the time down. He did not remember that he had ever failed to take the time in the morning until close on to noon; he would get the men at least in the morning. He asks for the check, and he takes the number from the check. If he misses a check once he would get it the second time. It has happened that he missed a check in the first round and discovered it in making the next; it would show up on the second round, unless the man was away again. He had not noticed any stones or rocks. Mr. Thompson was the superintendent over the men at that time. He had been asked to send one day's pay to the employee. His time book showed the check number 4023 held by the employee. Being asked if the men ever left the ditch at all, he said that at different times they were compelled to. The men have no regular Italian boss, but they sometimes have a "straw" boss for a day or so. He did not recognize the name of "Rosello." He did not know whether they had a straw boss on October 7 or not. These straw bosses are appointed when four or five men are needed to do some special work, and instead of bringing down the foreman an Italian is made the boss for the time being, and he tells them what to do. It is possible that the employee was there, and he overlooked him. When men are

discharged the checks are returned. The employee was not discharged on the 6th, and he had the check on the 7th. If he did not work on the 7th he stayed away of his own accord. It is his duty to report accidents; they are reported to him by the foreman.

Harold W. Thompson testified that he was superintendent for Fred T. Ley & Co., and knew nothing about an accident in this case until three weeks later, when the employee came to him and urged him to make the report. The insurer advised him not to make a report. There had been no blasting on that job; it was not virgin soil; you could see turf in there; he saw no rocks in the trench. It may be that the employee worked on October 7, so far as his recognition of him is concerned; they all look alike to him. He has several foremen under him; the time book will show who they were; there was one Italian. He did not know the name "Rosello;" he knew the Italian foreman as "Tony." The foreman of the excavating gang was Howard Rose.

S. R. Della Sala testified that he was in the employ of the Contractors Mutual Liability Insurance Company and had talked with the employee on October 29. He submitted a report which indicated that he received a phone call from Salem Street, to the effect that Dr. St. Angelo had treated the employee since October 8 for a strain of the back received while working for Fred T. Ley & Co., and wanted to know if the insurance company had seen his bill. Mr. Della Sala told him that the company knew nothing about the case, and to hold the bill until they had investigated the matter. The doctor told him that the man was then in his office and he would send him over. The man told Mr. Della Sala that he was hurt October 7 on the Roxbury job while in a ditch; that he was drawing a stone with a crowbar and felt something give way in his back; that he had worked until noontime and asked a fellow workman to tell the boss about the accident, as he could not speak English, and that he would return to work in a few days. He said he could not work at this time; he had been going to the doctor's office every day. Mr. Della Sala then wrote to Fred T. Ley & Co. and received a letter from Mr. Thompson on October 29. The employee called at the office again later, with

an interpreter, and Mr. Della Sala had recorded the questions and answers, which simply substantiated what the employee has said to-day.

Dr. James A. St. Angelo testified that he attended the employee on Oct. 8, 1914, some time in the morning. The patient stated that he was suffering from pain in the lumbar region of the small of the back. There was no swelling nor discoloration. The employee called each day for fifteen days thereafter. The lumbar region was painful when touched. The doctor diagnosed the case as a wrenched back due to lifting a large stone. The first day the back was strapped, and the employee complained of pain when bending and on lifting the left or right arm. The charge was $1 for first visit and $1 for each succeeding visit, $15 in all. The condition the man was in could be brought about by slipping and falling back on his back. After the fifteen visits the man came to his office and inquired as to whether the doctor had notified his employer about the accident. He called up Fred T. Ley & Co. about a week or ten days after the accident. The injury could have been caused by some disease of the back, but the condition was not consistent with tuberculosis of the spine, which is a slow process, and the man would complain of it. The doctor formed his opinion on the physical examination and history of the employee.

Dr. Harry H. Hartung testified that he examined the employee on Dec. 17, 1914. His report was introduced as evidence. He further stated that the ditch was about 2 feet wide, wide enough to stand in, and he gathered that the employee slipped backward and fell up against the side of the trench, but did not fall flat upon his back nor hit himself a violent blow in that region. He thought the employee did not have the appearance of being a healthy, robust man. By means of an X-ray the doctor thought he could better determine whether there is some pathological condition in the spine which would account for the appearance of the man and the complaint of pain in the back. If the man had fallen backwards with sufficient violence to strain his back on October 7, — a sprain in the region complained of, — and has done no work since, he judged that he should be well on this date, Jan. 17, 1915; if it were a mere strain, three or four weeks were sufficient to clear

the condition up. An X-ray would give positive evidence, he thought, as to whether there was a pathological chronic condition or one due solely to the injury.

Dr. Francis D. Donoghue gave as his opinion that the report of the Massachusetts General Hospital on the X-ray examination showed only that there was some process going on in the back, and they did not know what it was. After examination of the employee the doctor said that there was the appearance of a flat lower back, and the muscles were not in particularly good shape; that he had a deficient back which would be more susceptible to injury than the back of a man who was well developed, and if injury was sustained it would take longer for recovery. The present emaciation of the man could come from a painful back, where a man is run down and has been staying in the house after working out of doors. The employee appeared to be rather well developed and nourished. The doctor said it could not be told absolutely how long it would take for recovery from a sprain in a man of his type; that it would depend upon the back; that he would not be surprised at incapacity extending to the present time since the accident; no one can tell anything about it; it would be a mere guess. It would depend upon how the condition was worked out by the man himself; if the muscles got firm or stiff it would take quite a period; he had seen cases where they were permanently stiff by reason of the person not pursuing vigorous treatment after the acute process quieted down; he referred especially to a flat back. As to the falling into the ditch, he did not think it made any great difference; it is the acuteness of the wrench, which a man might get without moving out of his tracks. It was the acuteness of the happening that overstretched the muscle fibers that has been the cause of the disability. It was his opinion that it was all muscular; that the bony part did not amount to much; the abnormality in the fifth transverse process did not amount to much. Muscular injury, from which this man is suffering, does not show a shadow on the X-ray plate.

The insurer relies on Part II., section 16, of the statute as its defence against these proceedings, claiming that as the employee gave no written notice of the injury he has no standing under the statute.

The evidence shows that the employee, Vinino, informed Santo Rentoni, a fellow employee, of the occurrence of the injury immediately after it happened, telling him to inform the foreman that he was unable to work. He went to the office of Dr. St. Angelo and received treatment on the following and other days. He also informed another fellow employee, D. Tomasso, of the occurrence of the injury. During the month following the injury he called at the office of the subscriber with an interpreter, and requested George A. Dupont, the foreman, to report it. The foreman, however, did not report it, on the advice of the insurer that no report should be made. The employee also urged Superintendent Thompson, in the employ of the subscriber, to make a report of the injury, but again, on the advice of the insurer, no report was filed. Further, Mr. Della Sala, the interpreter in the employ of the insurer, received information of the injury through Dr. St. Angelo during the month following, and the employee had interviewed Mr. Della Sala, urging him to report it. The insurer, however, did not report the injury or advise the employers to report it, claiming that there had not been any accident and that the company had no knowledge of its occurrence.

If it is necessary that the employer, or his superintendent, have personal knowledge of each injury that occurs, it will be a difficult matter for a very large number of employees to receive any compensation, since many injuries occur, as this did, in the absence of the superintendent or foreman, and without any employee having actually witnessed it. The injured employee did everything within his limited powers to bring this accident to the attention of the subscriber and the insurer, and in view of his efforts and section 18, Part II. of the statute, which provides that "want of notice shall not be a bar to proceedings under this act, if it be shown that the association, subscriber or agent had knowledge of the injury," the insurer cannot reasonably take the position that it has been prejudiced by want of sufficient notice.

The committee of arbitration finds upon all the evidence that the association, subscriber and the latter's agent had notice and knowledge of the injury, and that the employee was totally

incapacitated for work thereby from Oct. 21, 1914, the fifteenth day after the injury, to Feb. 19, 1915, at which latter date all incapacity for work as a result of said injury ceased. There is due this employee, therefore, a reasonable allowance for medical services during the first two weeks after the injury, and compensation for a period of seventeen and two-sevenths weeks, at $8, a total due on account of compensation of $138.29.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

JOSEPH A. PARKS.
RICHARD M. WALSH.
WILLIAM J. CRONIN.

CASE No. 1423.

JOHANNA LOUGHARAN, WIDOW OF MICHAEL LOUGHARAN, *Employee.*

VILA A. SHAW, *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

UNUSUAL CASE. EMPLOYEE SUSTAINS COMPOUND FRACTURE OF THIGH, AND DEATH RESULTS. FACTS SHOW THAT CASE IS UNUSUAL ONE, AND BOARD ORDERS PAYMENT OF BILL FOR MEDICAL SERVICES FOR PERIOD SUBSEQUENT TO FIRST TWO WEEKS AFTER INJURY.

The only question at issue in this case was as to whether or not the case was an unusual one, within the meaning of Part II., section 5. It appeared that the employee had sustained a compound fracture of the thigh, that he became delirious, and that death resulted from the injury.

Held, that the insurer should pay the bill for medical services subsequent to first two weeks after injury.

Appealed to Supreme Judicial Court.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Johanna Lougharan,

widow of Michael Lougharan, *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1423 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Robert F. Sullivan, representing the widow, and Thomas H. Kirkland, representing the insurer, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, 423 Main Street, Springfield, Mass., on Tuesday, March 30, 1915, at 11.30 A.M.

Thomas C. Maher appeared as counsel for the insurer. The widow was not represented by counsel.

Michael Lougharan, the deceased employee, was injured Oct. 1, 1914, while in the employ of Vila A. Shaw as teamster. While driving over a crosswalk he fell from the team, the wheel passing over his left leg causing a fracture of same.

The question at issue was whether this was an unusual case under the act, requiring extra medical treatment, and whether the medical fees were reasonable.

Dr. Walter R. Weiser of Springfield testified as follows: This was a case of a very old gentleman who was thrown from a dump cart. He had a very serious compound fracture of the thigh. He was old and it was a fracture that was pointed; that is to say, instead of the bones broken off as we would like to have them, in this case they were broken in some such manner as this (Dr. Weiser draws a rough sketch of the fracture). It was compound. Now this old gentleman, after he had been in the house for a few days, became delirious and wild, and remained so. This delirium became so acute that it was almost impossible to keep the gentleman quiet, and we could not keep him quiet, and had to give him drugs to quiet him, and it was necessary to keep two attendants with him most of the time. He was in a very bad state, and finally after a number of weeks died of this delirium plus the fracture. Fractures in old people are fatal; they do not stand the treatment. Nothing could be done in the way of getting this man into a cast because of his wild and delirious state. He was older than his years, a great deal. He had a very bad heart, and had been treated for this heart previous, and was under

treatment at the time of the accident. He was at the hospital five and one-half weeks. The company were never charged for but one attendant at any time, and only charged for that at times when he absolutely needed one to hold him in bed. Dr. Weiser further testified that the two attendants were not included in the bill; that he did not know what the bill was, as he had nothing to do with the hospital end.

Under cross-examination Dr. Weiser testified as follows: —

Mr. HOLMAN. This was an unusual case? A. Yes, a very severe case, most unusual in every way.

Mr. MAHER. In what way? A. In that he was old; that he had a very bad fracture and became more wild and delirious, — like a man with delirium tremens. He required more constant attention than those cases usually do. In the average case a gentleman may be put in a cast, so that one could overcome the necessity of being confined. Here it was absolutely impossible to do anything for him. If a young person had a fracture he would be kept in ten weeks.

Q. Do you frequently have this unusual delirium? A. In twenty-five years I never saw anybody as wild as this man. I never saw one so acute.

Q. How long did it last? A. For several weeks. There would be a day or two when he would think he was very much better, and then go off much worse at night and continue so during the night. He was given a full double dose of morphine.

Bartholomew Lougharan, son of the deceased employee, testified that nothing had been paid on Dr. Weiser's bill of $100, and that his father was sixty-seven years old. Mr. Lougharan submitted to the committee Dr. Weiser's bill for $100 and the hospital bill for $51.45.

All parties agreed that this matter should be referred to the Industrial Accident Board, together with Dr. Weiser's testimony.

The committee recommends to the Board that the insurer be ordered to pay the bill of the hospital, in amount $51.45, and the bill of the physician, in amount $60.

DUDLEY M. HOLMAN.
ROBERT F. SULLIVAN.
THOMAS H. KIRKLAND.

The Industrial Accident Board adopts the recommendation of the committee of arbitration in the above case in regard to the

payment for reasonable medical service beyond the first two weeks after incapacity, and orders the payment of $51.45 by the insurer to the Hampden Hospital and $60 to Dr. W. R. Weiser.

ROBERT E. GRANDFIELD,
Secretary.

MAY 27, 1915.

CASE NO. 1424.

WILHELM JOHANSON (*alias* JOHNSON), *Employee.*
WILLIAM P. BALSER, *Employer.*
TRAVELERS INSURANCE COMPANY, *Insurer.*

INCAPACITY FOR WORK, DURATION OF. LITTLE FINGER OF EMPLOYEE SLIGHTLY CONTRACTED AS A RESULT OF THE INJURY. HAS SERVICEABLE HAND AND SHOULD RESUME EMPLOYMENT. COMPENSATION NOT DUE.

The employee received a personal injury which left him with a slightly contracted little finger. The medical evidence showed that the hand was serviceable and that the employee should be able to resume and perform his usual work. Compensation had been paid up to Dec. 28, 1914, at which time the insurer declined to make further payments.

Held, that all incapacity for work had ceased on date of last payment.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Wilhelm Johanson, *alias* Johnson, *v.* Travelers Insurance Company, this being case No. 1424 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Thomas F. Boyle of the Industrial Accident Board, chairman, Aaron P. Brest, 15 Court Square, Boston, Mass., representing the employee, and William C. Prout, 60 State Street, Boston, Mass., representing the insurer, heard the parties and their witnesses at the Selectmen's Room, Town Hall, Arlington, Mass., on Tuesday, Dec. 29, 1914, at 10.30 A.M.

M. H. Steuer appeared for the employee, and Louis C. Doyle appeared for the insurer, as counsel.

Wilhelm Johanson, on May 16, 1914, while in the employ of William P. Balser, got a sliver in his right hand and blood poisoning set in.

It is agreed that compensation for total incapacity for work has been paid at the rate of $10 a week up to and including Nov. 16, 1914.

The only question in the case is whether further compensation for total incapacity should be paid.

The material evidence is substantially as follows: —

Wilhelm Johanson, the employee, testified: —

At the time of the injury, May 16, 1914, I was working for William P. Balser. Three weeks after the injury I started to get compensation. Compensation was stopped on July 13, I think, for something over two weeks. Then it began again, after I had made a complaint to the Industrial Accident Board. I have been paid in full to Nov. 16, 1914. I have tried three or four times to work for Mr. Balser. I tried to work for him for the first time a couple of months ago. I could work only an hour or so. Then he sent me away. I tried to go to work for him a second time, on November 24, and could work only an hour or so. The last time was a week ago Saturday, and I worked all day long carrying lumber and doing the best I could. I worked on the machinery a little while, and then he sent me down to do something about the house. At the end of the day he paid me $1 and sent me away. I asked Mr. Balser if he had anything for me on Monday morning and he told me I could not use my hand. I have been trying to do other work about the house, trying to keep things going. I have been working on a commode. I have been able to work only from ten to twenty minutes at a stretch, according to the different tools I had to use. The pain in my arm bothered me. If I move this arm there is something the matter with the joints. It gets sore after I use it. I have tried repairing the children's shoes. There is nothing that I know of that I can work at and use this hand except a watchman's job. I cannot use a sledge hammer. I can hold it but cannot swing it. I have the most pain in the wrist, but the pain goes up my arm. Dr. Donoghue told me to use my hand — he said exercise would be good. I have not worked for any other man since the injury, but I have been to the employment office looking for work. I have been asking for any kind of a job. I cannot steer a plane. My hand is too sore and it seems to be weak. My first two fingers are all right, but the other three are the worst. I have been living on the $10 a week compensation and what my wife earns. I have five children.

Annie Johanson, wife of the injured employee, testified: —

I have seen my husband at work in the house where he had to use carpenters' tools. He was making a commode and had to use a hammer at that. He could work only ten or fifteen minutes at a time on it. He complained of pain in the hand. I saw him down in the cellar splitting wood. He was only down ten minutes when he called me to help him, and he said his hand was so sore that he could not move it. He used to split wood about twice a week. He called me to help him split it. He tried to saw wood sometimes, but had to leave it and go upstairs. The doctor told him to work with his hand. Since the injury I have been out working, cleaning offices and doing a wash every other week for a family out in Dorchester. I get $1.50 from the lady for doing the washing and for cleaning the offices I get $13 every two weeks. Out of this I have to pay my car fares, and have to go to Boston twice a day to work. The offices are at 71 Kilby Street. I have five small children, and the oldest is nine years. I never went to work before he was hurt. It was going on six weeks before I got work.

Dr. Charles D. Sawin testified: —

I examined Mr. Johanson, at the request of the Travelers Insurance Company, on Sept. 1, 1914, at my office. He gave me a general account of himself. He said he had always been pretty well and had never been hurt. His family history was negative. He was thirty-seven years of age and had five children. He said that a sliver had run into the thumb of his right hand and that it did not bleed much. The sliver was about one-fourth inch long and one-eighth inch thick. He said he was treated at the Carney Hospital for four or five days after trying to work a day or two. He was treated by Dr. Phillips of Quincy, and electricity was used. Dr. Littlefield also saw him. There was no operation at any time. He said the hand was swollen and sore, and he could not bend the fingers straight — that they were contracted for three weeks. On July 15 he went to the Massachusetts General Hospital. The ring and little fingers were crooked, and he says he never had any trouble before the accident. The right little finger seems to be in a state of permanent contraction, and it cannot be straightened out. There is no trouble in the other fingers. He said he did have at first, but that has disappeared. He had complete flexion of the thumb. There was no soreness of the arm and no pain when I examined him. The wrist motion was all right. The shoulder motions he made slowly, but there was no sign of any trouble in the shoulder. He showed a desire to assist his right arm with his left. He has done more or less work with that arm because there is absolutely no wasting of the muscles in that arm. If he had not used that arm there would have been a shrinking or a wasting of the muscles. When I saw him the acute symptoms had subsided. If he had a splinter in the

thumb there is no sign of it to-day. It has all cleared up. What is unusual about this case is the fact that it is the little finger independent of the other fingers. It is a most unusual case, and not having seen it at the beginning, it is harder for me to draw conclusions, but there is no question of ability to work at the present time up to the limitation of the hand by contraction of the little finger. There are plenty of people doing work with just one finger contracted. He can hold a saw or plane. He can become as expert as before. It is simply a matter of habit with him. That forefinger is useful. He has a thumb and the other three fingers can hold anything. There is perfect motion of the wrist, perfect motion of the forefinger and no wasting of any muscles. He said he had no pain when I examined him. If he had pain for the first few months, as he said, it was probably a septic neuritis, and that septic neuritis may have been caused by an impairment of the ulnar nerve. I said he ought to go to work and would be better off if he went to work. That was on September 1.

Dr. Francis D. Donoghue, an impartial physician appointed by the Board under section 8, Part III. of the act, reported as follows: —

This is a man that has a result of what was probably a cellulitis, and with some stiffness resulting.

The muscular condition of the hand would improve if he used it, as there is no interference with the muscles of the forearm which govern the fingers. He should be encouraged to work, and after a while his hand would accustom itself to the jars and to the incidental tiring that comes when a hand is not accustomed to work. He is able to do considerable work if he would make the attempt.

Nov. 4, 1914.

The history as shown by the Massachusetts General Hospital gives neuritis following a septic hand, which accounts for his long period of disability. With all the facts, the case now suggests a belief that he is able to do considerable work and be better off if he did it. It cannot be said that the man is entirely recovered from his accident.

Nov. 10, 1914.

The arbitration committee finds upon all the evidence that the injured employee, Wilhelm Johanson, is entitled to compensation from Nov. 16, 1914, the date compensation was discontinued, up to and including Dec. 28, 1914, a period of six weeks, at the rate of $10 a week, amounting to $60, total incapacity for work having ceased on Dec. 28, 1914.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

THOMAS F. BOYLE.
WILLIAM C. PROUT.

Aaron P. Brest dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties in the Hearing Room, New Albion Building, Boston, Mass., on Thursday, Feb. 11, 1915, at 11.30 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

The report of the committee of arbitration contains all the material evidence presented to said committee, the only additional evidence heard by the Industrial Accident Board on review being that of Francis D. Donoghue, M.D., its medical adviser, who testified as follows: —

> This man shows a contraction of the right little finger to about a right angle. The two terminal phalanges are placed at a right angle to the proximate phalange. The finger cannot be extended, so far as the two distal phalanges are concerned, beyond a right angle, but in that position he is capable of doing the ordinary work of a painter or a carpenter. It is the very best position for a crippled finger to remain in after an injury. He has a serviceable hand which can make all necessary motions for work. In my opinion he is able to work.

The evidence shows that the employee received a personal injury by reason of the entrance of a sliver of wood into the thumb of his right hand on May 18, 1914, and that all incapacity resulting therefrom ceased, in accordance with the findings of the committee of arbitration, on Dec. 28, 1914. The employee at that time had a serviceable hand with which he could have performed his customary work had he been so inclined.

The Board therefore finds upon all the evidence that all incapacity for work as a result of the personal injury received

by the employee, Wilhelm Johanson, on May 18, 1914, ceased on Dec. 28, 1914, and that the insurer, having paid compensation in accordance with the decision of the committee of arbitration, is not under any further obligation to pay compensation to the said employee.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1429.

ANTONIO BARBONI, *Employee.*
GEORGE J. REGAN, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*
A. B. MORONG, *Physician.*

REASONABLE MEDICAL SERVICES. EMPLOYEE ALLOWED TO SELECT HIS OWN PHYSICIAN AND WENT TO INCORPORATED DISPENSARY. REGULAR CHARGE OF DISPENSARY PAID BY INSURER. STAFF PHYSICIAN NOT ALLOWED TO RECOVER FOR SERVICES.

The injured employee went to the North End Dispensary for treatment and paid the regular dispensary charge of $0.25 for each visit. Subsequently the staff physician who treated him rendered a bill of $19, charging $3 for the first treatment and $2 for each subsequent treatment. Employee was not his private patient.

Held, that the staff physician could not recover.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of A. B. Morong, M.D., *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1429 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, W. Lloyd Allen, Shawmut Bank Building, Boston, Mass., representing the insurer, and Peter E. Deehan, M.D., 252 Huntington Avenue, Boston, Mass., representing the physician, heard the parties in the Hearing Room of the Industrial Accident Board, New Albion Building, Boston, Mass., Friday, Jan. 29, 1915, at 2 P.M.

John M. Morrison of Sawyer, Hardy, Stone & Morrison appeared as counsel for the insurer; the physician appeared unrepresented.

Arbitration was requested by the insurer on the ground that Dr. A. B. Morong had submitted a bill for $19 in the above case, to which, in the opinion of the insurer, he was not entitled.

Dr. A. B. Morong testified that the North End Dispensary was an incorporated hospital, and that from the time of its institution, twenty-five years ago, up to the time of going out of business, the first of the current year, he had been the visiting physician, and practically the only member of the staff. He treated Antonio Barboni, as shown by his bill, on September 3, 4, 5, 6, 7, 9, 11, 14 and 15, and rendered a bill of $3 for the first visit and $2 each for the succeeding visits. This was for personal services rendered by him. He did not, however, regard Barboni as a private patient, the latter having paid 25 cents to the dispensary for each visit. This was the regular dispensary charge. He had charged other insurance companies for his own personal services, and had been reimbursed by said companies. The Maryland Casualty Company was one of them. He had never made any such charge for services excepting where the insurance company was to pay, and stated that there was no rule of the corporation which prohibited a member of the staff from making a charge for his own personal service.

George A. Cronin, head of the medical department of the Employers' Liability Assurance Corporation, Ltd., testified that he had reimbursed Barboni for the amount paid the dispensary, $3.25. He would have paid Dr. Morong's bill if Barboni had been a private patient of Dr. Morong's, and if the amount of the bill had been reasonable. He had also paid the bill of the physician who had treated Barboni at the time of the accident. It is the custom of his company, excepting in cases of large

industrial corporations, to allow the injured employee to choose his own physician.

The committee of arbitration finds that the Employers' Liability Assurance Corporation, Ltd., furnished reasonable medical services at the time of the accident to Barboni, and was at all times ready to furnish them; that Barboni was allowed to select his own physician, and he chose the North End Dispensary, where the regular charge for treatment is 25 cents per visit; that the insurance company paid the expense incurred by Barboni at the dispensary, and that Dr. Morong is not entitled to any additional charge.

FRANK J. DONAHUE.
W. LLOYD ALLEN.

Peter E. Deehan, M.D., dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, March 4, 1915, at 10.30 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The point in dispute was whether or not the attending physician, a member of the staff at the North End Dispensary, was entitled to charge a fee for his personal services in addition to the usual fee charged by the dispensary.

The evidence shows that the physician, Dr. A. B. Morong, had treated the employee, Antonio Barboni, at the North End Dispensary on nine different occasions, from Sept. 3, 1914, to Sept. 15, 1914, inclusive, charging $3 for the first treatment and $2 for each successive treatment. These charges were for the personal service rendered by the physician, the employee having paid the dispensary its customary fee of 25 cents for each visit.

The Industrial Accident Board finds upon all the evidence that the customary fee for the treatment given the employee by

Dr. A. B. Morong at the North End Dispensary is 25 cents per visit; that the services rendered by the said Dr. Morong were furnished by him as a member of the staff of the North End Dispensary; that the acceptance from the employee of the customary fee for each treatment by the said dispensary, and the reimbursement to the employee by the insurer of the amount so paid, canceled the obligation of the insurer under the Workmen's Compensation Act; and that Dr. A. B. Morong has no claim under the statute against said insurer.

FRANK J. DONAHUE.
DAVID T. DICKINSON.
DUDLEY M. HOLMAN.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1437.

FRED ST. PETER, *Employee.*

AMERICAN WOOLEN COMPANY (WOOD WORSTED MILLS), *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

DURATION OF INCAPACITY FOR WORK. EMPLOYEE IS UNABLE TO EARN WAGES AS A RESULT OF INJURY. HAND RENDERED PERMANENTLY INCAPABLE OF USE. ADDITIONAL COMPENSATION DUE THEREFOR. COMPENSATION AWARDED ON BASIS OF TOTAL INCAPACITY AND FOR LOSS OF USE OF HAND.

This employee, a loom fixer, received a personal injury which resulted in a complete ulnar paralysis and injury to the nerve. The hand was so injured that he was unable to flex the fingers or thumb, or bring them together to grasp or pick up objects. The employee had been unable to obtain any employment at which he could earn wages, although he had made a diligent effort to obtain such employment.

Held, that the employee was entitled to total incapacity compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Fred St. Peter *v.* Em-

ployers' Liability Assurance Corporation, Ltd., this being case No. 1437 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Jeremiah F. Mahoney, representing the employee, and Arthur P. McCormick, representing the insurer, after being duly sworn, heard the parties and their witnesses at the Court House, Lawrence, Mass., on Friday, Feb. 12, 1915, at 10.30 A.M.

John M. Morrison appeared as counsel for the insurer, and Mahoney & Mahoney as counsel for the employee.

This employee, a man twenty-nine years of age, on Jan. 2, 1914, received an injury arising out of and in the course of his employment. His work was that of a loom fixer, and his average weekly wages were $17.20. While at his work with the loom his left hand became caught between a belt and pulley, which resulted in a complete ulnar paralysis and injury to the nerve. The structure of the hand was so injured, including the nerves, muscles and bones, that the fingers, thumb and palm are left in a fixed and rigid position, so that its position, including the fingers and thumb, cannot be materially moved or controlled by the employee from a point below the wrist on account of the injury, especially that to the nerves; the tissues in the fingers, thumb and hand are progressively wasting, owing to lack of nutrition in the tissues. Some bone was also later removed.

The committee examined the hand, and the claimant could not flex the fingers or thumb or bring them together so as to grasp or pick up objects from a table.

A report of an examination made by Dr. Francis D. Donoghue, appointed by the Board as impartial physician, was received in evidence, of which the following is a copy: —

DEC. 23, 1914.

Mr. Fred St. Peter of 417 Essex Street, Lawrence, Mass., in the employ of the Wood Worsted Mills, had his left hand caught between a belt and pulley on Jan. 2, 1914.

He was treated at the Lawrence General Hospital, attended by Dr. Dearborn.

Present condition shows a complete ulnar paralysis, with interference and with loss of substantially all motions of the thumb.

Owing to the nerve injury there are changes in the nutrition of the fingers, so that there is a probability of their ultimately being lost. This is a total and permanently disabled hand.

This man has been paid compensation at the rate of $8.60 a week, and has not been paid any extra compensation. He is anxious for a lump sum settlement, so that he can change his occupation, and it seems to be a proper case for such disposition.

Compensation has been paid by the insurer at the rate of $8.60 per week since the fifteenth day after the injury to the last date, viz., Feb. 5, 1915. No added or extra compensation under the statute for the disability of the hand has been paid by the insurer, the right to such added compensation being in question before the committee.

The employee testified substantially that he was not able by reason of the condition of his hand to perform the work of a loom fixer, which had been his employment for about seven years previous to the injury, and that as a result of the injury to the hand he had not been able to obtain any earnings since said injury; that he had made efforts to obtain work such as he could do at different mills in Lawrence, and had looked for work since, from acquaintances and friends, without success; that he had rendered some friendly assistance to a man named Donovan, when he, Donovan, had given some variety shows in the month of November, 1914, for which he, the claimant, did not expect or receive compensation; that this friendly work consisted of seeing that certain posters advertising the show were put up, and allowing Donovan to use his, the claimant's, name in advertising the shows as if they were the claimant's shows. He had also allowed Donovan to use some stationery stating that a few shows were given by the claimant; that the claimant did this to accommodate Donovan who didn't want, for personal reasons of his own, to do this business in his own name. The claimant testified that he had no interest in these shows and had never received anything in profits therefrom; that the enterprises were not his, the claimant's, business. He also testified that he had rendered some small friendly services to a man named Lacourse at the office of the latter in Lawrence, said Lacourse doing some business in selling jewelry on instalments, and as an insurance agent; and that he, the claim-

ant, was usually at the office of Lacourse on Tuesday and Saturday nights, and at times had ridden with the said Lacourse in his automobile while Lacourse was collecting money; that he had also assisted in reading off some entries to the said Lacourse from the latter's office books, and had also rendered other favors to said Lacourse; that the said Lacourse had treated him, the claimant, with kindness since his injury, and he, the claimant, had not received or expected pay for the above friendly services or favors which he had done.

The employee further testified that he had formed the desire to buy an interest in the said Lacourse's business from any sum which he might receive, if he did receive one from the insurer in settlement of his compensation by a lump sum. He had sold two watches for Lacourse at $30 each on a commission of 25 per cent., which was to be paid him if the buyers of the watches made their payments, but as no collections had been made from them, he, the claimant, was not entitled to a commission.

The insurer contended that from this evidence the committee should infer that the claimant had obtained some earnings from working for Donovan and Lacourse since the injury, and that the claimant had shown thereby that he was able to obtain earnings, so that his compensation should be either stopped or reduced.

The committee finds that the left hand of the employee was rendered permanently incapable of use by the injury, and that he is entitled therefore to a compensation of $8.60 per week for a period of fifty weeks from Jan. 2, 1914, the date of the injury.

The committee further finds that the injury has permanently disabled the claimant from performing his regular occupation and work of a loom fixer, and that it has also disqualified him from performing the ordinary work of a laborer; and that he is at present in the odd-lot class of labor mentioned in Cardiff Construction Company *v.* Hall, 4 B. W. C. C. 159, and also governed by the Sullivan case. (Mass. Supreme Judicial Court Reports, 1914.)

The employee is naturally an intelligent man, however, though without much school education, and may and probably will gradually work up to an earning capacity outside of the ordinary mechanic's or laborer's work.

The committee finds, however, that he has not been able to obtain any earnings since the injury by reason thereof, although he has made a reasonable effort to do so and to place himself in some business connection or in line therefor from which he can make earnings, and that he is, therefore, entitled to a continuation of the payment of $8.60 per week during the continuance of his incapacity or of his inability to obtain earnings as a result thereof.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

DAVID T. DICKINSON.
JEREMIAH F. MAHONEY.

Arthur P. McCormick dissents.

CASE NO. 1438.

ALFRED LEO, *Employee.*
SIMPSON BROTHERS CORPORATION, *Employer.*
CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*
FRANK A. PAGLIUCA, *Physician.*

REASONABLE MEDICAL SERVICE. INJURED EMPLOYEE SENT TO PHYSICIAN. IN AN EMERGENCY GOES TO ANOTHER AND CONTINUES WITH SECOND PHYSICIAN FOR TWO WEEKS' PERIOD. INSURER LIABLE TO SECOND PHYSICIAN FOR EMERGENCY TREATMENT ONLY.

The employee, who worked in Cambridge, injured his finger. His foreman sent him to a competent physician who dressed his finger and told him to come back in a few days, and also to come at any time that his finger bothered him. On the evening of the day of the injury the employee went to a physician near his home in the North End of Boston to have his finger treated. During the two weeks following the injury he visited this second physician twice a day for three days and thereafter once daily. This second physician was furnished by the employee, on the occasion of the first treatment, with the name and address of the first physician and of the employer, but made no attempt to get in touch with either.

Held, that the insurer is not liable for payment of physician selected by the employee.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Alfred Leo *v.* Contractors Mutual Liability Insurance Company, this being case No. 1438 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, Francis Juggins of 199 Washington Street, Boston, Mass., representing the insurer, and Dr. James E. Prior of 36 Hancock Street, Boston, Mass., representing the employee, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Cambridge, Mass., Tuesday, Jan. 26, 1915, at 10.30 A.M.

J. W. Bond appeared as counsel for the insurer. The employee was unrepresented.

The only question involved in this case was whether or not the insurer was liable for the payment of Dr. Frank A. Pagliuca's bill, in amount $15, for attendance upon the employee, Alfred Leo. The insurer denied liability on the ground that it had furnished reasonable medical services, having furnished to the employee the services of Dr. Charles W. Adams, a competent physician and surgeon. The employee claimed, however, that he was justified in engaging his own physician because of the need of emergency treatment on the evening of Monday, Nov. 16, 1914, three days after the injury.

There was no question as to the employee having received a personal injury which arose out of and in the course of his employment on Friday, Nov. 13, 1914, while in the employ of the subscriber, Simpson Brothers Corporation, at the new Germanic Museum, Kirkland Street, Cambridge. His average weekly wages at the time of the injury were $12, and all compensation due under the statute has been paid.

Alfred Leo, the employee, stated that he worked the rest of Friday and Saturday following the date of the injury, not com-

plaining of it until Monday, Nov. 16, 1914. He reported at the office of Dr. Charles W. Adams as requested by the timekeeper, the latter giving him a slip of paper with Dr. Adams' address on it. He had his finger dressed, and was given pills to take every four hours. Monday evening his finger became swollen and sore, and because of the pain resulting therefrom he called at the office of Dr. Frank A. Pagliuca for the purpose of having the pain relieved. This was at 10 o'clock in the evening. The doctor lanced his finger and relieved the pain. Thereafter he went to Dr. Pagliuca's office twice daily on Tuesday, Wednesday and Thursday, and for one visit on Friday and each of the following days during the first two weeks after the injury. Several days ago, after the insurance company had refused to pay his bill, he gave Dr. Pagliuca the envelope given him by Dr. Adams.

On cross-examination Leo stated that the paper that had been given him by the timekeeper with Dr. Adams' address on it he had thrown away right after he had been to see the doctor. Dr. Adams had told him if his finger were very sore to come back to see him. He had given him the envelope, with the pills which he was to take. About 5 o'clock Monday night he had taken off the dressing put on by Dr. Adams and had put on a flaxseed poultice. After he left Dr. Adams' office on Monday he went home. He took the subway from Kendall Square into Park Street. The Saturday after he was hurt he went to see the timekeeper to get his pay. The timekeeper and foreman at this time saw his finger. The timekeeper asked him why he did not go to Dr. Adams, and he stated that his finger was very sore and he could not go over there. After one week the corporation that he worked for furnished him with a Boston doctor's address.

Dr. Frank A. Pagliuca of 353 Hanover Street, Boston, testified that Mr. Leo first came to him at 10 o'clock on Monday night, Nov. 16, 1914. His finger was wrapped up. He had on a flaxseed poultice. He told him that the only treatment was to open the finger. The finger was swollen up to the base of the third phalange, and Leo's temperature was 101. There was a great deal of tension there. There was a little opening in the finger, and he had to enlarge the opening. There was a little

pus underneath, but not very much. He then painted the finger with iodine, put on creosol poultice and sent him home. He had asked him what treatment the other doctor gave, and he replied that he had put on some black stuff and bandaged it. He asked him for whom he worked, and Leo handed him an envelope with Simpson Brothers Corporation's name on it. He had never been refused payment of a bill from any insurance company, and did not think that it was necessary to notify the employer that he was treating Leo when another doctor had been retained, in view of the fact that this doctor lived in Cambridge. He had made an incision of one-half an inch in the finger. The finger made the usual progress after the operation, the only treatment necessary being to dress it every day. He treated him more than once every day in his office for about two weeks and three days. He gave Leo a bill for $15 covering two weeks' treatment, $3 of which was for lancing on the occasion of the first visit. Leo paid him $5 when the insurance company had refused to pay the bill, and he gave Leo a receipt calling for payment of the balance by weekly payments. Leo's finger was in a septic condition, or he had a felon. It needed treatment every day. He had to wash, clean and swab it out. Leo could not work during the two weeks he treated him, and could not work for three weeks afterwards. He himself had telephoned to the insurance company when they refused to pay the bill, and he was told that he had given improper treatment in this case, and that the finger should have been well in three days.

Dr. Pagliuca produced at the hearing the envelope which had contained the pills given by Dr. Adams. It had on it Dr. Adams' address.

Dr. Charles W. Adams, 322 Broadway, Cambridge, representing the Contractors Mutual Liability Insurance Company, testified that he was one of the physicians regularly employed by the insurance company in the vicinity of Cambridge. The first time he saw Leo was a little after 9 o'clock, on Monday, Nov. 16, 1914. Leo had stated that he stuck a wire in his finger Friday morning, and he did nothing particular about it. Afterwards it pained him, and he reported to the timekeeper Monday morning, after he had been at work a little while, and

the timekeeper sent Leo to him. Leo had a slightly infected finger, just below the base of the nail, on the side of the finger. There was no great amount of infection, no swelling of the hand, or no swelling at the base of the nail. The swelling was localized to an area of three-quarters of an inch, less than the terminal phalange. There was a small punctured opening. He cleaned about the opening, washed in creosol antiseptic solution, and made slight pressure and got perhaps a drop of pus out. Leo had no increased temperature; was normal in every respect but for his finger. He had stated to Leo that perhaps it would be a good idea if he enlarged the incision. Leo did not seem to want to be hurt any if he could help it, so he thought it was better to let it go. He put on a little icythyol outside the swelling, put on dressing wrung out of creosol solution, and bandaged it. He had told Leo to come back in a few days. If it pained him very much he was told to come back any time. It did not seem possible for any great amount of pus or swelling to accumulate from Monday morning to Monday night. He had given Leo eight salicylate soda tablets to relieve the pain, if there were any. If he had enlarged the incision he should have enlarged it about one-quarter of an inch, and he had seen like cases recover after three or four days. He had gone from his office to Park Street in seven or eight minutes, by making good connections. He would take a surface car to Kendall Square, or car going down Prospect Street to Central Square station. He lived something over a mile from Kendall Square, and somewhat less than a mile from the Germanic Museum. The quickest way to go to the North End from his office would be to walk to Cambridge Street, take a viaduct car, and change at the North Station for the elevated. It is about three minutes' walk to Cambridge Street, and fifteen minutes' walk to Kendall Square.

J. W. Bond, for the Contractors Mutual Liability Insurance Company, testified that the first time he knew that Leo was treated by another doctor was ten days after treatment by Dr. Adams.

The evidence before the committee of arbitration shows that the employee, Alfred Leo, was furnished the services of a skillful physician and surgeon by the insurer, the Contractors Mutual

Liability Insurance Company, and that said physician rendered the employee reasonable and proper medical attention on the occasion of his first visit, on Nov. 16, 1914, and was prepared to give said employee such further necessary medical treatment as the injury required. It appears that, by reason of a condition of swelling and pain which arose on the night of Nov. 16, 1914, the employee called upon another physician, of his own selection, Dr. Frank A. Pagliuca, who lived nearby, and received treatment and some degree of relief from him. Thereafter the employee continued to call upon the said Dr. Pagliuca, who rendered a bill of $15 to the insurer for the services furnished the employee during the first two weeks after the injury. The employee understood and knew that the physician furnished by the insurer, Dr. Charles W. Adams, was available to him for such medical and surgical treatment as the injury required, but notwithstanding this fact continued to call upon his own physician daily, after the occasion for the first call in the evening by reason of an emergency had passed.

The committee of arbitration finds upon all the evidence that the insurer furnished reasonable medical services to the employee during the first two weeks after the injury, and that there is no liability upon said insurer for the payment of any part of the amount due by the employee to the physician, Dr. Frank A. Pagliuca, except the payment of the charge for $3 for the services rendered on the occasion of said employee's emergency visit on the night of Nov. 16, 1914. Under the statute an employee may, "in a case of emergency, or for other justifiable cause," call upon a physician other than the one provided by the insurer to treat him. The committee finds that the employee was justified in engaging his own physician on the night of Nov. 16, 1914, the occasion being one of emergency, and that the insurer should reimburse the employee in the sum of $3, this being a reasonable fee for the services rendered by the physician to the employee.

FRANK J. DONAHUE.
FRANCIS JUGGINS.

James E. Prior, M.D., dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room of the Board, New Albion Building, Boston, Mass., on Wednesday, Feb. 24, 1915, at 2 P.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The point at issue was whether or not the insurer was liable, by reason of emergency or other justifiable cause, for the payment of the bill of the physician, Dr. Frank A. Pagliuca, for attendance upon the employee, Alfred Leo.

The evidence shows that the insurer furnished the employee reasonable medical services on Nov. 16, 1914, the day of the injury, and that such services were available to the employee at all times during the first two weeks thereafter. By reason of a condition of swelling and pain which arose during the night of Nov. 16, 1914, the employee called upon a physician of his own selection living near by, Dr. Frank A. Pagliuca, and received treatment and a degree of relief. Thereafter the employee continued to call upon his own physician and requested the insurer to pay the bill which said physician rendered, in amount $15. The employee understood and knew that the physician furnished by the insurer was available to him for such treatment as he needed during the first two weeks after the injury, but, notwithstanding this knowledge, he continued to call upon his own physician after the occasion for the first call, made necessary by the emergency created by the condition of swelling and pain, had passed.

The Industrial Accident Board finds upon all the evidence that the employee was justified in engaging his own physician on the night of Nov. 16, 1914, the occasion being one of emergency, and that the insurer should reimburse the employee in the sum of $3, this being a reasonable fee for the services rendered by the physician to the employee on this occasion of

emergency. The Board finds, further, that reasonable medical services were furnished the employee by the insurer during the first two weeks after the injury, and that, with the exception of the allowance made for the emergency visit to Dr. Frank A. Pagliuca, on the night of Nov. 16, 1914, there is no liability upon the insurer for the payment of the services rendered to the employee by the said Pagliuca.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
JOSEPH A. PARKS.

CASE NO. 1439.

PAUL GLASS, *Employee.*
WHITMAN MILLS, *Employer.*
AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. EYE INJURY. EMPLOYEE ALLEGED THAT LOSS OF VISION WAS DUE TO POISONING FROM USE OF DYE. EXPERT TESTIFIES THAT CONDITION PROBABLY NOT DUE TO INJURY. COMPENSATION NOT AWARDED.

The evidence showed that the employee did not receive a personal injury, as claimed, by reason of the contact of a certain dye with the left eye, the vision in that eye being destroyed. It appears that, in order to produce the effect claimed, the dyestuff would have to be of such strength as to make it impracticable to use it for the purpose of dyeing cotton cloth. The expert oculist stated that dyestuff of that strength would destroy the fiber of the cotton and the tissue of the hands, and that such dyestuff would destroy the whole cornea of the eye.

Held, that the employee was not entitled to compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Paul Glass *v.* American Mutual Liability Insurance Company, this being case No. 1439 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Solomon

Rosenberg, representing the employee, and Edward W. Holmes, representing the insurer, heard the parties and their witnesses in the Hearing Room, City Hall, New Bedford, Mass., on Friday, May 7, 1915, at 11 A.M.

Orton A. Peck appeared as counsel for the insurer, and N. L. Nadeau appeared for the employee.

Paul Glass, an employee of the Whitman Mills, claimed that on Oct. 29, 1913, at 3.30 P.M., while handling dyed yarn, he received an injury by some of the dye getting into his left eye, poisoning it and resulting in the complete loss of same.

This case was reheard as a new matter by the committee of arbitration, the findings and decision of the former committee being canceled by vote of the Board.

The following is all the material evidence in the case: —

It was agreed that the testimony of Everett H. Hinckley, as given at the previous hearing on Jan. 29, 1915, be incorporated as a part of the record in this case. At that hearing he testified that he is principal of the department of chemistry and dyeing at the New Bedford Textile School, and has been a chemist and dyer since 1899. He testified that methylene blue and magenta may have some preparation of arsenic in their composition; that they were also what were known as direct cotton colors; that there were three methods of making these colors: first, by dividing the fiber with salt and sodium ash; second, sodium sulphite, salt and sodium ash — this is a caustic; third, by strong alkali solution, which is a much stronger caustic. The method of application would be to dip the bobbins in this strong solution. He never heard of a case of damage to the eye from the use of colors.

In addition, Mr. Hinckley further testified that he had analyzed the samples of three different colors of stained yarn or dyed yarn given to him by Mr. Nadeau, and found that they were stained with basic dyestuffs, which show organic and inorganic materials. The dyestuff proper is an organic material, and combined with it there were found inorganic materials. Hydrochloric acid is found as an essential constituent of the dyestuff. In the inorganic materials zinc chloride was found in small quantities, but the amount of material treated was also small. The two basic dyes from which these three colors

were made contained about 25 per cent. of zinc chloride, figured on the total weight of the dye itself. The zinc chloride is an alkaline caustic and attacks animal tissue. Asked what effect hydrochloric acid, found as an essential constituent of the dyestuff, has upon the human tissue, he replied that its acidity is neutralized by the basic reaction of the dyestuff, and is not dangerous to the tissue of the man's eye or body.

Paul Glass, the employee, testified that in October, 1913, he was employed carrying fillings in the Whitman Mills; if there were any notices posted in regard to workmen's compensation he never saw them and no one ever called his attention to them. He does not read English and nobody ever read the notices to him. He did not know that he had any rights under the Workmen's Compensation Act. He first learned about it some ten months after the injury occurred. He happened to have a physician for his sick girl, and the doctor told him that he ought to see a lawyer about his case. He never told anybody at the office about the injury. He went to see Dr. Marsden, as he had had him several times when he first came to this country to attend the children. This was the second or third day after the injury. Another physician, Dr. Charonde, told him to see Dr. Foster, an eye specialist, and he went to see him. He never knew of anybody who was injured at the mill and received compensation. Mr. Glass said that the accident occurred on a Wednesday afternoon, October 29, about 3.30 o'clock. He stated that he was carrying some filling and all at once felt a pain in his eye. He was working on some green and blue filling, and showed samples which he secured from a man working in the Whitman Mills. There was a man who looked in his eye that day. He further testified that the dye was fresh and stained his fingers; that he was perspiring and wiped his face with his handkerchief — sopping his eye with it. He could not say how many days after the accident occurred he went to see Dr. Foster. Glass further testified that he was out of work about two months. He had returned to work on December 27 at the same rate of wages. He paid $25 for the operation and $5 for the doctor's assistant. He also paid $2 a visit for a number of visits to the

doctor — as near as he could recollect, about six; and he paid Dr. Marsden $1 for a visit and 40 to 60 cents for medicine. He also paid $6 for a glass eye.

It was agreed that the testimony of John Moore, as given at the previous hearing on Jan. 29, 1915, be incorporated as a part of the record in this case. At that hearing he testified that Paul Glass is his uncle, and worked at the mill in the same room with him in November, 1913; that he is a filler in; that Glass came up to him that day and said he wanted a piece of cloth — that something was in his eye. He wanted to put cold water on his eye, but Moore told him that water was not good for it. He looked into his eye, but could not find anything in it.

It was agreed that the testimony of Henry Stevens, as given at the previous hearing on Jan. 29, 1915, be incorporated as a part of the record in this case. At that hearing he testified that he was an employee of the Whitman Mills in October and November, 1913. He knew Glass, who carried filling on a truck. Stevens himself was a weaver, and Glass brought fillings to him. He saw him one afternoon with a sore eye. He looked at it, but could not see anything in it. It was red, with much water running from it, and was in an inflamed condition. That was the first time he had seen him that afternoon. He did not see him after that in the afternoon. He did not see color about the eye or on the handkerchief.

It was agreed that the testimony of Dr. E. E. Foster, 271 Union Street, as given at the previous hearing on Jan. 29, 1915, be incorporated as a part of the record in this case. At that hearing he testified that he is a specialist in eye troubles, and that he knew Glass and treated him on Nov. 5, 1913. Glass had, in the lower quarter of the eye, a complete destruction of the cornea — a prolapse of the iris. He saw him again on the 8th and tried to save the eyeball. The eye was presumably no better at this time. He saw him again on November 17, and on November 18 he operated on the eye. After that he saw him frequently during the healing process. He could not tell the cause of the injury. Asked if the dye got into his eye it would have caused the injury, he said it was

impossible to tell, as there was an infected ulcer at the time he first saw it. A caustic dye might cause an abrasion — an eating through. The dye itself he did not believe would produce an ulcer, but any caustic would prepare the eye for an infection. On cross-examination he stated that an irritating chemical in the eye might cause an ulcer. This eating through would take anywhere from the fraction of a second to several minutes. When he first saw him the ulcer was well developed, the eye had perforated. In the usual case it would take a week or several weeks for the ulcer to perforate; in an active case it would take a somewhat shorter time. He does not remember that there was talk of an accident at that time.

In addition, Dr. Foster further testified that in order to know what effect hydrochloric acid and zinc chloride may have on the eye of a person it is necessary to know the strength of the solution. It is possible to conceive that a very caustic dye, in concentrated form, would be strong enough to destroy the tissue of the thickness of a cornea, but dyestuffs of that strength would destroy the fiber of the cotton and the tissue of the hands, and a solution of that strength would destroy the whole cornea.

We feel, after a careful review of the testimony, that there has not been sufficient evidence produced to warrant a finding that he received an injury arising out of and in the course of his employment, and that in the absence of such evidence he is not entitled to recover.

DUDLEY M. HOLMAN.
EDWARD W. HOLMES.
SOLOMON ROSENBERG.

CASE No. 1444.

CATHERINE MCINTYRE, WIDOW OF JOHN J. MCINTYRE, *Employee.*
WALWORTH MANUFACTURING COMPANY, *Employer.*
AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DEATH RESULTS FROM THE INJURY. DEPENDENCY. DISEASE. INJURY MORE THAN YEAR PRIOR TO DEATH HAS NO CAUSAL RELATION THERETO. ARTERIOSCLEROSIS FOLLOWED BY CEREBRAL HEMORRHAGE CAUSES DEATH. COMPENSATION NOT AWARDED.

It appears that the employee received an injury, which arose out of his employment, on May 21, 1913. He was struck on the head by a piece of a pulley wheel, and received necessary medical attention at a reputable hospital. Several stitches were taken to close the wound. About seventeen months later the employee died, and the medical evidence showed that advanced arteriosclerosis, followed by cerebral hemorrhage, was its cause. There was no causal connection between the disease and the injury.

Held, that the claimant widow was not entitled to compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Catherine McIntyre, widow of John J. McIntyre, *v.* American Mutual Liability Insurance Company, this being case No. 1444 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Edward L. McManus, representing the widow, and C. H. Poor, Jr., representing the insurer, after being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Tuesday, March 16, 1915, at 11 A.M.

Gay Gleason appeared as attorney for insurer.

The question before the committee was whether or not the injury received by the deceased contributed to his death.

At the request of the Industrial Accident Board, Dr. George B. Magrath, medical examiner, appeared and testified that he

made no internal examination of the deceased, but that he formed an opinion as to the probable cause of death. He was called to the home of the deceased on Oct. 6, 1914, by the police headquarters. He interviewed Mrs. McIntyre and her daughter, and was told that the deceased had been injured while at work by a piece of pulley striking him on the head, causing wounds of the scalp, which necessitated several stitches being taken at the Carney Hospital. About two months before his death he was growing stupid, his hearing and eyesight were failing him, and he also had kidney trouble, with tremor of the hand and head.

I found a man about sixty-eight years of age, 5 feet 10 inches tall, weighing about 160 pounds. He was well built, lens slightly opaque, arms at each side and limp, neck was then rigid, chest and abdomen cool, no edema, radial arteries could be felt. In view of the information received and the condition of the body, I formed the opinion he had been dead about three hours, — in other words, that death had occurred not very far from the time when I made my visit at 5.30. He may have lived on that estimate for an hour or more after he fell. In view of the foregoing, I came to the conclusion that he died from natural causes, and from one or the other of two things (taking into account his age). One of these is some disorder of the heart circulatory apparatus, most common where there is no history of valvular disease. A man of his age may have sclerosis of the arteries of the heart itself or arteriosclerosis. The other is, that he might have lived for an hour with a hemorrhage of the brain resulting from arterial rupture. This does not cause immediate death as does sclerosis of the arteries. Death from apoplexy rarely occurs under two hours after the onset of the hemorrhage. I did not, in view of all I ascertained, regard his death due to any form of injury. He was suffering from general arteriosclerosis. One of the accompaniments with a man of his age is some degree of nephritis and some degree of heart disease as well. I based my opinion on his present history given me by his family. I did not deem a postmortem examination necessary to establish to my satisfaction the cause of death. The paralysis agitans had nothing to do with his death as an immediate cause. This is a functional disease of the central nervous system. I do not know of any indirect way in which paralysis agitans could be connected with arteriosclerosis or with apoplexy. I do not know of any way in which paralysis agitans or tabes would promote or otherwise affect ordinary sclerosis of the heart, kidneys or disease of the arteries of the brain. If I had thought there had been any possible connection between the injury of eighteen months ago and the death, I would have made a postmortem examination without any doubt.

Dr. Charles Ober Kepler, called by the insurer, and whose report was before the committee, testified that he examined the deceased Aug. 27, 1913, and found him suffering from an advanced arteriosclerosis and a very probable locomotor ataxia with some symptom of general paralysis; that the evidences of the advanced arteriosclerosis were the marked arcus senilis in both pupils, the blood pressure, high color, and the marked arterial condition. He remembered that the arteries of the deceased were hard, although this was not in his report. He made a statement that there was no doubt that the chronic diseases from which the man was suffering were incurable, and would, before very long, — a matter of possibly two or three years or less, — carry him off. He stated that paralysis agitans of itself seldom, if ever, kills, but it is very annoying to a patient and incapacitates him after a time. The death of the deceased occurred suddenly, caused by sclerosis of the nourishing arteries of the heart. The arteriosclerosis had no relation to the injury, and an injury of this sort could not cause arteriosclerosis; the doctor could see no way that the injury could hasten the arteriosclerosis.

The committee finds, on the weight of the medical testimony, that the injury received by the deceased on May 21, 1913, in no way contributed to his death which occurred on Oct. 6, 1914; that his death was due to natural causes, and that the widow, Catherine McIntyre, is not entitled to recover compensation therefor.

DUDLEY M. HOLMAN.
EDWARD L. MCMANUS.
C. H. POOR, JR.

CASE NO. 1445.

ANNIE T. WELCH, DAUGHTER AND DEPENDENT OF MICHAEL WELCH (DECEASED), *Employee.*
TOWN OF FRAMINGHAM, *Employer.*

ARISING OUT OF THE EMPLOYMENT. DEATH RESULTS FROM THE INJURY. DEPENDENCY. DISEASE. BRONCHO-PNEUMONIA. EMPLOYEE SUSTAINED COMPOUND FRACTURE OF TIBIA AND FIBULA. BRONCHO-PNEUMONIA SUPERVENES, CAUSING DEATH. HAS CAUSAL CONNECTION WITH INJURY. DAUGHTER OF EMPLOYEE TOTALLY DEPENDENT FOR SUPPORT. COMPENSATION AWARDED.

It appears that the employee received a personal injury by reason of the fall of a stone weighing about 150 pounds upon his left leg, causing a compound fracture of both the tibia and fibula. He received surgical attention and was confined to the bed for over a month, when broncho-pneumonia supervened. The development of this condition was due to the loss of blood and shock following the operation which was performed immediately after the injury, as well as to the confinement necessitated by the nature of such injury. A daughter of the employee had given up her employment about three years prior to his injury and death, because of ill health, and upon the promise of her father that he would support her. She depended solely upon her father for support and received all her support from him.

Held, that the death of the employee arose out of the employment.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Annie T. Welch, dependent of Michael Welch, deceased, *v.* Town of Framingham, this being case No. 1445 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Edward G. Galvin, representing the dependent, and Lewis M. Palmer, M.D., representing the town of Framingham, heard the parties and their witnesses in the Selectmen's Room, Tribune Building, Framingham, Mass., on Tuesday, Jan. 26, 1915, at 11 A.M.

The questions raised in this case were: first, whether the death of the deceased employee was the result of the injury which he received in the course of and arising out of his employment on Oct. 3, 1914; second, whether the claimant, Annie T. Welch, was a dependent of the deceased at the time of the injury, and if so, whether total or partial; third, what were the average weekly wages of the deceased at the time of the injury?

The employee, a man seventy-seven years of age, was a laborer working for the town of Framingham at the Edgell Grove Cemetery. He had worked in said cemetery for about twenty-five years. While assisting in taking down a monument on Oct. 3, 1914, the top stone of the monument, weighing about 150 pounds, fell from the stone underneath, which was about 5 feet above the ground, on to the employee's left leg, causing a compound fracture of both the tibia and fibula. He was taken to the Framingham Hospital for medical relief and a surgical operation performed, and he was confined in bed until Nov. 9, 1914, when he died. On Oct. 27, 1914, broncho-pneumonia developed, from which he died on said November 9.

Dr. Sanford O. Baldwin, called by the claimant, testified substantially as follows: That he first saw the deceased employee on Oct. 3, 1914, the date of the accident, at the Edgell Grove Cemetery; that he found him suffering from a compound fracture of the left leg; that the larger bone of the leg was badly crushed and he was bleeding profusely; that he got him to the hospital as quickly as possible, where an emergency operation was performed; that after said operation the employee was in a very weak condition from the loss of blood and the shock of the accident; that he developed broncho-pneumonia on Oct. 27, 1914, from which he died on Nov. 9, 1914; that when the employee was admitted to the hospital he had some symptoms of bronchial trouble; that in his opinion death was due to the injury which the employee received on Oct. 3, 1914; that he died from broncho-pneumonia, said broncho-pneumonia having developed, in his opinion, by reason of the employee being confined to his bed as a result of the injury to his leg.

Annie T. Welch, the claimant, testified substantially as

follows: That at the time of her father's accident the family consisted of her father, her sister Margaret and herself; that at the time of said accident she was housekeeper for her father and sister; that she formerly worked at the "Gazette" office in Framingham as a typesetter, and earned $9 a week, and that while she was working she paid board; that five years ago she became ill with appendicitis and a floating kidney, and underwent an operation at the Framingham Hospital; that after returning from the hospital she was obliged to remain in bed for one month; that she then tried to work for a few hours each day for about six months after this, but had to give this up as she was not strong enough to do the work; that she then started a small store at Framingham Center, but also had to give this up; that her father then told her to stay at home and he would look out for her; that he told her this about three years before his death; that her mother was living at this time; that since said time she has remained at home, doing most of the housework, assisted somewhat by her mother; that her mother died in March, 1914; that since this time she has acted as housekeeper for her father; that she was still in poor health at the time of her father's death; that her sister Margaret was a telephone operator and earned $13 a week; that her sister paid her father on the average of $7 a week, which was used by the father toward the household expenses; that nothing was said by her father as to any payments being made her for services as housekeeper, but that when she wanted money she would ask her father for it, depending solely on him for her support; that her sister Margaret occasionally gave her a small cash present, although nothing regularly on which she, the witness, depended for her support; that for some time before the death of her father, the deceased employee, the house in which the witness, her father and sister Margaret lived was owned by the father, subject to a mortgage, and that some time before his injury and death the mortgage had been foreclosed, and at the time of his death the title thereof had passed out of his hands through the foreclosure; that her father had worked for six months at the Edgell Grove Cemetery before the injury, and for the remainder of the year worked on the farm on which they lived.

F. L. Oaks, treasurer of the trustees of the Edgell Grove Cemetery, testified that the deceased employee was paid $2.50 per day for the days which he actually worked; that from April 1, 1914, to Oct. 1, 1914, he received $382.50; that from April 1, 1913, to Nov. 1, 1913, he received $400.75.

Ernest A. Hale, superintendent of the Edgell Grove Cemetery, testified substantially that the employee was paid at the rate of $15 per week when he worked, and that he had worked during the year preceding his injury for the town at the cemetery for a period of six months, viz., from April 1 to October 3, but that he would have been given employment during the month of October if he had lived; that during these six months when he actually worked he had lost only four days, when he had not worked on account of the weather; that the average time of the one or two laborers who worked at the cemetery during the other six months preceding the injury, that is, from November to April, amounted to one hundred two and three-eighths days, such average laborer during such period of six months receiving $255.90.

The committee finds on the weight of the evidence that the injury to the employee caused the compound fracture of his leg and subsequent surgical operation and confinement in his bed therefor; and, considering the medical testimony as above given, that said injury and operation, with their attendant shock and confinement, were a material contributing factor and cause in bringing about the broncho-pneumonia which developed in the employee on October 27, resulting in his death; and that the injury was, therefore, the primary cause of his death.

The committee finds on the weight of the evidence that the claimant was wholly dependent on the earnings of the deceased for her support, and that said support was furnished her by the deceased in accordance with an arrangement which he had made with her when he told her that he would look out for her if she gave up her work, when she was in poor health about three years before his death.

The committee finds that the average weekly wages of the deceased at the time of the injury, regard being given to the earnings of the deceased from the town during the six months before his death, and to the average weekly wages earned by

the other laborers from the town at the cemetery during the preceding year, were $12, and that there is, therefore, due from the said employer, the town of Framingham, to the claimant, said Annie T. Welch, as said total dependent, a weekly compensation of $8, being two-thirds of said average weekly wages of $12, for a period of five hundred weeks from Oct. 5, 1914, the date of the injury.

It was agreed that the medical charges for services rendered to the deceased while he was at the Framingham Hospital for the first two weeks following the injury would be adjusted between the parties and payment made therefor by the town.

DAVID T. DICKINSON.
EDWARD G. GALVIN.

Lewis M. Palmer, M.D., dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, April 1, 1915, at 10.30 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that the employee, Michael Welch, received a personal injury arising out of and in the course of his employment by the town of Framingham, on Oct. 3, 1914, by reason of the fall of a stone weighing about 150 pounds on to his left leg, causing a compound fracture of both the tibia and fibula. He received surgical attention at the Framingham Hospital, where he was confined in bed until Nov. 9, 1914, at which latter date he died from broncho-pneumonia, said broncho-pneumonia having a causal relation to the personal injury received on Oct. 3, 1914. The employee earned an average weekly wage of $12, this being the average weekly wage of laborers performing the same grade of work as the employee

during the year preceding Oct. 3, 1914, the date of the injury. Annie T. Welch, a daughter of the employee, and the claimant, was wholly dependent for support upon him at the time of his injury and death. She had given up her employment about three years prior to the date of the injury to her father because of ill health and upon the promise of her father that he would support her. She depended solely upon her father for support and received all her support from him.

The Board finds upon all the evidence that the employee, Michael Welch, received a personal injury arising out of and in the course of his employment on Oct. 3, 1914, by reason of which a condition of broncho-pneumonia developed having a causal relation thereto; that the average weekly wages of the employee at the time of the injury were $12; that Annie T. Welch, the daughter and claimant, was wholly dependent for support upon said employee at the time of his injury; and that there is due the said Annie T. Welch a weekly payment of $8 for a period of five hundred weeks from Oct. 3, 1914, the date of the injury.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1447.

CARL G. PETERSON, *Employee.*
CRITCHLEY MACHINE SCREW COMPANY, *Employer.*
TRAVELERS INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. EMPLOYEE USES SHIPPING INCLINE AS MEANS OF EXIT. NO RULE FORBIDDING SUCH USE. EMPLOYEES HAD USED INCLINE IN PRESENCE OF SUPERIORS. COMPENSATION AWARDED.

The employee received the injury which incapacitated him as the result of his use of a shipping incline as a means of exit from his place of employment and his contact with a box which was located at the bottom of the incline. It appears that there was no rule against such use and that employees had made use of the incline for the purpose of leaving the premises of the subscribers and had not been reprimanded for such use.

Held, that the employee was entitled to compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Carl G. Peterson *v.* Travelers Insurance Company, this being case No. 1447 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Frank P. Ryan, representing the employee, and Winfred H. Whiting, representing the insurer, heard the parties and their witnesses in Committee Room 30, City Hall, Worcester, Mass., on Friday, Jan. 22, 1915, at 2 P.M.

Daniel F. Gay appeared as counsel for the insurer, and Carl H. L. Bock appeared for the employee.

It was agreed that Carl G. Peterson was employed by the Critchley Machine Screw Company of Worcester on Nov. 9, 1914; that his average weekly wages were $5; that if he was entitled to recover compensation he would be entitled to the minimum, namely, $4 a week, during his period of total incapacity.

It appeared in evidence that at noontime, after the boy had finished his lunch, he and another boy started to leave the building to go across the street to a store to buy some candy. There was a stairway leading from the floor upon which they were to the street floor. This stairway was one which was fastened by means of pins to a slide and was 2 feet wide. The slide was used for sliding boxes down to the shipping room. On the day in question Peterson and another boy started to go out, the other boy walking down the stairway and Peterson sliding down the slide at the right of the stairway. When he reached the bottom he collided with a case which fell over on him so that his leg was caught underneath the case. The case contained steel cones, weighing about 350 pounds, and he received a fracture of the left tibia, middle third of the left leg, and was sent to the City Hospital.

Carl G. Peterson testified that he had been in the employ of the Critchley Machine Screw Company about nine months; that he had frequently slid down this shipping incline, and that

others were in the habit of sliding down the incline; that he had never been forbidden to do so, nor was there any notice forbidding the use of the incline for this purpose; that this was the only exit where the door was open at that time for entrance as well as exit; that the front stairway was open for exit only.

On the evidence of Edward Johnson it appeared that he was the boy who was with Peterson on the date of the injury; that he walked down the stairs while Peterson slid down the incline, and that when Peterson got to the bottom the box was toppled over on him and his leg was broken. He further testified that he had frequently slid down the incline himself; that he had done it in the presence of his boss and the superintendent of the factory without being rebuked by them, or having anything said to him by them against such a practice, and that others, to his knowledge, had gone down that way, and that they were never forbidden to use the slide for the purpose of reaching the lower floor, nor was there any notice posted forbidding such use of the slide.

The Critchley Machine Screw Company is insured by the Travelers Insurance Company. The question was raised by the attorney for the insurance company that this might be considered serious and willful misconduct on the part of Peterson. He later withdrew this claim, but contended that the injury did not arise out of the employment. In the decision of Mr. Justice Sheldon in the Sundine case the court states: "The first contention, that she was not in the employ of Olsen while she was going to lunch, cannot be sustained. Her employment was by the week. It would be too narrow a construction of the contract to say that it was suspended when she went out for this merely temporary purpose, and was revived only upon her return to the workroom. It was an incident of her employment to go out for this purpose." While it is true that Peterson had already eaten his lunch and was not leaving the building for that purpose, it appeared in evidence that it was a custom for him to go out after eating his lunch during the noon hour; that whether he was going out for lunch or to buy some candy seems immaterial — he was still in the employ of the Critchley Machine Screw Company.

While the shipping slide was not provided by the employers for the purpose of exit for the use of the employees, and a narrow stairway was provided for that purpose, it nevertheless was known to the employers that the employees did so use the slide; that they had used the slide for such purposes in the presence of their immediate boss and also in the presence of the general superintendent, and neither of the officials had either rebuked them for so using the slide or forbidden them to do so; and as it further appeared in evidence that two could not pass on the stairway or go down the stairway together side by side, the slide was frequently used, with the knowledge of the employers, as a method of going from the upper to the lower level.

We find, therefore, that Peterson received an injury arising out of and in the course of his employment; that he is entitled to recover compensation; that he is entitled to medical and hospital treatment during the first fourteen days after the injury, counting the day of the injury as the first day, and to the payment of total compensation at the rate of $4 a week from Nov. 23, 1914, the fifteenth day after the injury, up to and including Jan. 22, 1915, the date of the hearing, a period of eight and five-sevenths weeks, amounting to $34.86; that he is still incapacitated and is entitled to further compensation until he is able to return to work.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

DUDLEY M. HOLMAN.
FRANK P. RYAN.

Winfred H. Whiting dissents.

CASE No. 1452.

GEORGE MANDIGO, *Employee.*
BLISS BROTHERS COMPANY, *Employer.*
FIDELITY AND CASUALTY COMPANY OF NEW YORK, *Insurer.*

DURATION OF INCAPACITY FOR WORK. UNREASONABLENESS. EMPLOYEE DOES NOT ACT UNREASONABLY WHEN HE ACCEPTS THE TREATMENT AND ADVICE OF COMPETENT EYE EXPERT AND DOES NOT HAVE EYE REMOVED. COMPENSATION AWARDED.

The insurer declined to pay further compensation on the ground that the employee had acted unreasonably in declining to accept an operation for the removal of the injured eye. It was claimed that all incapacity for work subsequent to such refusal should be charged to the employee's unreasonableness and not to the injury. It appeared that the employee had been accepting the treatment and advice of an expert oculist and was ready to undergo an operation if advised that it was necessary. The latter did not advise the removal of the injured eye.

Held, that the employee had not acted unreasonably.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of George Mandigo *v.* Fidelity and Casualty Company of New York, this being case No. 1452 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, chairman, representing the Industrial Accident Board, Richard P. Coughlin, representing the employee, and W. Lloyd Allen, representing the insurer, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, New Albion Building, Boston, Mass., on Tuesday, Jan. 12, 1915, at 2 P.M.

The question at issue was solely whether or not the employee had acted unreasonably in declining to have the operation performed for the removal of the injured eye, recommended by the impartial physician, Dr. William J. Daly.

John M. Morrison represented the insurer, and Messrs. White & White represented the employee.

George Mandigo, the employee, sustained an injury to his right eye on June 18, 1914, by reason of a small piece of very fine steel wire striking and imbedding itself over the sight of the eye, resulting in the loss of sight in the injured eye. His average weekly wages were $16.50. The specific benefits for the loss of the eye are being paid, and regular compensation was paid up to Nov. 4, 1914, at which time it was claimed by the insurer that incapacity for work had ceased. There was also the question as to whether or not the injured eye should be removed, since Dr. William J. Daly, the impartial physician appointed by the Board, reported on September 11, as follows: "The patient has an irritable left eye which reddens and waters easily. The vision is equal to the perception of light and will probably not improve. The eye is painful and a menace to the sight of the other eye. The right eye should be removed. Until that time he will not be able to work."

The insurer is willing to assume the expense of such removal.

George Mandigo testified that after the eye was injured he went first to his family physician, Dr. B. L. Dwinell, of Taunton, who sent him to a specialist, Dr. Conro, of Attleboro, about the 25th of June. As the eye appeared to grow worse all the time he finally went to the Massachusetts Eye and Ear Infirmary the last day of June, being treated by Dr. Spalding, who operated on the eye July 2 for a traumatic cataract. He remained in the hospital until July 25, and after that time was treated at the infirmary every two weeks, or whenever the doctor advised him to return. The left eye has been inflamed very little, once or twice; and a little treatment had been given it at the infirmary, but none since he left. He can only distinguish light from dark with the injured eye, but the left eye is very good. He can read a little more with it than he could at first. The right eye irritates him by spells, two or three times a day, for a short time, and sometimes in the night; outside of that it does not bother him at all. On November 23 he returned to work doing his previous work, and about nightfall each day the eye commenced to pain considerably. He worked until Thanksgiving Day, returned Friday and worked until Saturday noon. On Monday morning reported at the hospital. During the time he worked he re-

ceived 15 cents per hour, seven and three-quarters hours a day. Previous to the injury he received 30 cents per hour, $16.50 per week. He worked for the city of Taunton for five and one-half days in addition, driving a team and working on the road, receiving 25 cents per hour for eight hours. He did not continue because there was no more such work for him. He did this work "last month," but could not remember the date. He worked for a short time for a neighbor hauling logs to the mill, receiving 15 cents per hour, $3 in all for the work. He has also done chores around his own place which his boys used to do. No doctor of the Massachusetts Eye and Ear Infirmary advised him to have his eye removed, but after he returned to work and the eye became sore, when he returned to the infirmary they told him it was not well to work with the eye sore, and that if it continued to be sore it would have to come out. Since then it has not bothered him, as he stopped working. Dr. Murphy treated him at the infirmary and had not advised at any time the removal of the eye; it was another physician who spoke of its removal. He was tested for glasses, the good eye showing 20/20 vision, and Dr. Andrew J. Lloyd fitted the glasses, bifocals, some time in October. He is willing, if there is danger of the other eye becoming infected, to have the injured eye removed, although no doctor told him it was to be removed, and Dr. Daly simply stated it in his report and did not tell him about it. He had worked for Bliss Brothers Company nearly eight years, and there is work for him now if he could perform it. He was a satin finisher of jewelry, and the work has to be done very carefully, and requires close attention.

Joseph T. Bacon testified that he was foreman for Bliss Brothers Company at the time of the injury, and that the employee worked under him then, and when he returned in November, at which time the work was not satisfactory, the employee doing only about half of what he previously did, and some of it having to be done over again. He had observed the employee and noticed that he complained of his eye irritating him and that it was tired, although it did not look bad. Although business had been very dull the department in which the injured employee worked had been kept busy, and

he can return to work when he is able to perform same. It is quite essential that one should have good sight, as the work is close, fine work and is a continual stare. The employee was quite efficient at that work. It is possible that something might be found for him to do if he cannot do his previous work. He thought if Mr. Mandigo had one good eye he might be able to do that kind of work.

Dr. Edward H. Murphy testified that he had given four months' service every year for about four years to the Massachusetts Eye and Ear Infirmary. From the statements made by Mr. Mandigo he would advise leaving the eye in. If he had returned two or three times and stated that the eye was irritating him and it showed irritation at the time, he might advise removing it; but if the irritation was only evident two or three times a day for a short time, he did not think it necessary to have it removed. Looking at the eye, no apparent inflammation was present to-day. At the present time the eye might be removed without much danger to the other, although in many cases the sight of the other eye has been lost. There is no inconvenience in the wearing of a perfectly fitted glass eye, except the taking it out every night and cleaning it. He does not recommend the removal of an eye unless it is bothering the good eye. If the good eye started to lose vision and became red and inflamed, and he could find no other cause for it than the injury to the bad eye, he would probably advise the removal of the bad eye. In this case he would not advise the removal of the eye. He should think that if the employee got a glass that has side pieces on it, with a goggle effect, to protect the eye and stop the irritation he might be able to do his former work. It is possible that he might have done his work in November if he had had the eye protected. He would not advise the employee to go back to work with no more protection to the injured eye than he has at present.

The evidence shows that while the impartial physician, Dr. William J. Daly, recommended the removal of the injured eye, the employee had not acted unreasonably in failing to accept this recommendation, because of the fact that he was receiving treatment regularly at the Massachusetts Eye and Ear Infirmary, and the attending specialist, Dr. Edward H. Murphy,

had not, at any time, recommended its removal. The said specialist stated that the employee was ready at all times to have the eye removed. George Mandigo, the employee, also testified that he was ready, when advised by his attending physician, to have the eye removed. Dr. Murphy, however, had stated that this was not necessary, and that its nonremoval was not dangerous to the vision in the uninjured eye.

The committee of arbitration, therefore, finds upon all the evidence that the employee is entitled to a continuance of the weekly payments due on account of his total incapacity for work, based upon one-half of the average weekly wages earned by him at the time the injury occurred; that is, to the payment of $8.25 weekly from the date upon which the insurer suspended compensation to the present time, said weekly payment to be continued in accordance with the requirements of the statute. From the amount due under this decision is to be deducted one-half of the average weekly wages earned by the employee during the interval that he was able to work, subsequent to the occurrence of the injury.

The committee recommends, and makes the recommendation a part of its findings, that the employee secure a suitable covering for the injured eye, as recommended by Dr. Murphy, and at once attempt to perform his former work.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

JOSEPH A. PARKS.
RICHARD P. COUGHLIN.

W. Lloyd Allen dissents.

CASE No. 1458.

SARAH PETERSON, WIDOW OF PETER PETERSON, *Employee.*
UNION STREET RAILWAY COMPANY, *Employer.*
MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DEATH RESULTS FROM THE INJURY. DEPENDENCY. PRE-EXISTING DISEASE. LOCOMOTOR ATAXIA. INJURY OCCURS IN MARCH, DEATH NINE MONTHS LATER. NO CAUSAL RELATION. COMPENSATION NOT AWARDED.

The employee received an injury on March 28, 1914, while working as a street car conductor for the subscriber. A passenger had attempted to board his car and, missing the handle, grabbed him by the arm and pulled him from the moving car to the ground. His left hip was bruised and two ribs were broken as a result of the fall. Compensation was paid to Oct. 2, 1914, when payments were stopped, the claim then being made that no compensation was due thereafter, and that the employee was suffering from conditions having no causal relation to the injury. The medical evidence showed that the fall did not aggravate the disease of locomotor ataxia which was pre-existing at the time, nor accelerate the death of the employee. Death was held to be due to a terminal infection, with pus germs in the bladder and kidneys, this infection coming from bladder paralysis which, in turn, was due to the locomotor ataxia from which the employee suffered.

Held, that the claimant was not entitled to compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Sarah Peterson, widow of Peter Peterson, *v.* Massachusetts Employees Insurance Association, this being case No. 1458 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Benjamin F. King, representing the widow, and Edward W. Young, M.D., representing the insurer, after being duly sworn, heard the parties and their witnesses at City Hall, New Bedford, Mass., on Monday, May 3, 1915, at 11 A.M., and a continued hearing was held at the Hearing Room of the Industrial Accident Board, Boston, Mass., on Tuesday, May 25, 1915, at 10 A.M.

John W. Cronin appeared as counsel for insurer, and Frank Vera appeared as counsel for the widow in New Bedford, but was not present at the Boston hearing.

This employee on March 28, 1914, received an injury arising out of and in the course of his employment. His average weekly wages were $19.88. He was working at the time as a street car conductor for his employer, when a passenger attempted to board the car while in motion, missed the handle and grabbed the employee by the arm, thereby pulling him from the platform of the car to the ground. His left hip was bruised and two ribs were broken as a result of this fall. The insurer has paid compensation at the rate of $9.94 a week up to and including Oct. 2, 1914, at which time payments were stopped. The question raised was whether or not the employee's death, which occurred Jan. 6, 1915, or his incapacity following Oct. 2, 1914, had any causal connection with his fall of March 28, 1914.

Sarah Peterson testified substantially as follows: That she was the wife of the deceased, and she last saw him some time in May, 1914; that he was the same as he had always been physically, but he had been ill about fourteen years ago, and at another time he had pneumonia. She thought he was injured March 27 or 28, 1914, which was before the hearing took place in the Probate Court. He used to come to her house once a week, and he appeared to walk as any one would; she called his skin good. She had been separated from her husband since April 19, 1913. From this date to May, 1914, she had seen her husband once a week. He worked right along, but she did not think he returned to work after the accident. He did not come to her house after the hearing in the court. She observed no signs of trouble about the man, but she did remember his going to see Dr. Pierce three or four years ago. She saw no medicine at home except liver pills. He used to assist in washing the dishes previous to his accident; she had never heard him complain. After April 19, 1913, she would see the employee on the car; this was the only time she saw him to talk with. She thought he began to take these pills about three or four years ago, and she was of the impression that he took them previous to his seeing Dr. Pierce.

She stated that at this time Dr. Pierce was treating the family, as she had been ill; that Dr. Pierce told her after she had inquired after her husband's condition that it was probably nervous trouble. She had never heard her husband complain of his legs troubling or jumping; the only time she knew of any trouble was the time he went to see Dr. Pierce.

Dr. A. V. Pierce testified substantially as follows: That the employee came to his office about three years ago and asked for advice and treatment for an irritation or, rather, difficulty he had in avoiding his urine; that he stated he had been treated by various physicians without apparently being helped. The doctor examined and questioned him; he gave him a rather hopeless viewpoint, and after the one visit the man never returned. He considered he had a trouble which could not be helped with medicine. The patient laid the cause of his trouble to the fact that he was on his feet at long intervals without being, at times, able to leave his car. He gave no specific history, as he remembered, of any venereal disease. He saw no evidence of a lesion of an old chancre at this time. He felt he might have a difficulty which was possibly connected with the nervous system; if there was an organic lesion back in the spinal cord or brain there would be a difficulty of this sort, and a man would be unable to avoid his urine, or in early stages of locomotor ataxia, for instance, a man has this first. He had no knowledge of these conditions at the one visit. He thought that possibly Dr. McAllister, a specialist in venereal diseases, was spoken of at this time as treating him.

Alice L. Matherson testified substantially as follows: That she was the mother of Mrs. Sarah Peterson, and that she knew the deceased; that the last time she had seen him was at the Court House. Previous to the hearing at the Court House she had only seen him occasionally, perhaps once a month. When she did see him he appeared as well as usual. She had never known of his being home on account of sickness five or six years previous to the separation.

Anna E. Gifford testified substantially as follows: That she knew the deceased, as he boarded in the same house with her about fourteen years, which was before he and his wife separated. He boarded elsewhere after the separation, but he

used to come to the house after this. He complained of his back, and his limbs jumping after he left home; he used to complain of his limbs when he was at home. He went away from home April 19, 1913. He complained of his limbs being tired when he came home; that he had colds accompanied with coughing in the winter, and also sore throat. She stated that before April, 1913, the deceased used to tell how his legs were jumping, and how they ached, and that pains would shoot down through them from his hips into his ankles. She used to see him once a week after April, 1913. After this he was treated by Dr. Mandell, and he thought he had helped him in his limbs, so that they did not jump so much. She saw him after his accident on the car in 1914; he walked down the street and stopped in the house to rest; the last time he was there he said he felt fine. This was before he took the fourth treatment from Dr. Perry, which might have been in September. She stated that the deceased said his limbs would jump; that his limbs, back and urine troubled him; that this was just before he left the house in April, 1913; that Dr. Mandell treated him after he left home, 1913, which was before the time of the accident. He said that his legs didn't twitch so much after he went to him for a while. He used to complain of his back; this was before he left home, in April, 1913.

J. E. Norton Shaw testified substantially as follows: That he was attorney for the deceased a year ago; that he had talks with him on the case in question, and he remembered of his telling him about the accident on the car. He couldn't remember what he said, but he told him some of his symptoms; he was preventing some one from having an accident, and in doing this he had been badly injured on the car. At the time the case was going on in regard to the children he was unable to be present; he said he would have to have something done on account of the accident on the car. He thought he weighed from 169 to 170 pounds when he first knew him; it was about two months previous to his death that he last saw him; he still complained and was in bed; he said he would have to have something done as he was feeling badly. The witness never thought he showed signs of nervousness, but signs of worry; matters with his wife worried him.

Lena B. Hammer testified substantially as follows: That the deceased came to her in March, 1914, she thought, and asked her if she would take him to board; that it was over a month before he fell from the car. He complained of feeling tired. His knees would turn in when he went to bed, and this was not long after he came to board with her, which was before he fell from the car. He said to her at one time that he felt rather tired, that his knees were jumping. She thought he always looked rather pale, but she did not take much notice, as she did not know who he was. He came back to her house after he was injured and was treated by Dr. Mandell; she had never seen the doctor before. He was in bed three weeks before he began to walk. He walked quite well, but said that something hurt him around his hips, so she advised his going to another doctor. He went to Dr. Pierce and came home, telling her that he was going to the hospital. He went to the hospital two or three days after and stayed four weeks. When he came home he could barely walk and held on to the tables. The jumping in his knees was just the same, and the nerves of his legs were jumping. He said he was going to have Dr. Perry give him some treatments. He went on Wednesday, and Thursday afternoon Dr. Perry came over to the house, went upstairs, and gave him treatment for his spine. He lay in bed twenty-four hours after this. He never walked after the fourth treatment. He seemed to be getting along nicely after the third treatment. He walked on crutches for a couple of weeks. One Saturday night when he came in his legs fell under him, and she thought he had no power of himself; that he had paralysis up to his waist. He went back to the hospital for ten days, and then he begged the witness to take him back. She took him back and kept him until he passed away. She stated that he took pills, but she took no notice of them.

Mary E. Robinson, sister of Mrs. Peterson, testified substantially as follows: That she had known the deceased since she was a child; that he complained of having trouble with his urine, which was a few years ago; that his legs pained him some. She noticed his condition after the accident, in the hospital, and when he called at Mrs. Hammer's. She had heard him complain before the accident. She stated that it

was after the accident that he told her he was sick and his legs were jumping; that when he came to her house he said his legs were jumping; that he didn't say to her that they had never jumped like this until after he got hurt.

A report of an autopsy performed by Dr. Timothy Leary upon the body of the deceased was received in evidence, a copy of which follows: —

APRIL 1, 1915.

Name: Peter Peterson. Age, 47.

Died at New Bedford, Mass. Date, Jan. 6, 1915.

Autopsy at undertaking rooms of Chas. A. Vaughn, New Bedford, Mass. Date, April 1, 1915. Hour, 11 A.M.

Witnesses:

Stenographer.

Clinical diagnosis:

Anatomical diagnosis: Locomotor ataxia with contractures and atrophy of legs; acute dilatation of right heart; acute passive hyperemia universal; acute edema of lungs and brain; acute and chronic cystitis and pyelitis; hypertrophy of bladder with trabeculation; acute pyelo-nephritis, right; chronic tuberculosis of right lung.

Estimated age 50, gray hair, bald over vertex; short gray moustache. Body identified by Charles A. Vaughn, undertaker.

Legs show moderate emaciation; are flexed and bent to right. (This is said to be the position in which body was found by undertaker after death.) There is present over the outer aspect of right thigh a region of ulceration 23 by 11 centimeters, superficial, covered with hardening compound.

Body is embalmed by arterial injection; right brachial artery incision over right arm below flaxilla.

Back shows slight decubitus over back of right crest of ileum in posterior axillary line 3.5 by 2 centimeters. There is slight superficial decubitus over mid sacral region.

Surface of body is covered in large part with a growth of mold and skin.

Position of legs can be corrected only in part because of tension of left abductors and fixation, apparently muscular, of knees.

Subcutaneous fat: Measures 8.1 centimeters.

Peritoneum: Is smooth and moist. Preservation is fairly good. Liver lies 4.5 centimeters below tip of xiphoid, 4 centimeters above and behind rib margin in nipple line. Diaphragm fourth rib right; fourth interspace left. Both inguinal rings are closed.

Pleural cavities: Left is free. Right shows firm fibrous adhesions at apex. Each contains estimated 300 cubic centimeters of a brownish watery fluid.

Pericardium: Is smooth, contains estimated 5 cubic centimeters of a brownish watery fluid.

Heart: Pulmonary artery and cavities of right heart are moderately filled with partly fixed lax currant jelly clots. Heart muscle is partly fixed with formalin. Wall of left ventricle 1.7 centimeters; wall of right ventricle .4 centimeter; mitral valve 8.3 centimeters; aortic valve 7.4 centimeters; pulmonary valve 6.6 centimeters; triscuspid valve 11.3 centimeters; depth of left ventricle 6.8 centimeters. Valves and cavities are normal. Arch of aorta shows few small patches of yellow opacity. Coronaries are normal.

Lungs: Are moderately heavy, the backs are colored a bluish red with tense pleura. Fronts are shrunken, gray. The right lung shows over back a lax consolidation, indenting on pressure. On section cut surface is colored a formalin gray where fixed; elsewhere a dark garnet red, and furnishes on pressure a frothy watery fluid in quantity. The pleura at apex shows a slaty gray scar 5 by 3 centimeters. The upper lobe of lung, in addition to the lax consolidation described, shows multiple small firm shotty masses gray white on section. The bronchial mucosa is not remarkable. Bronchi are filled with a granular material evidently vomitus. Vessels at root of lung contain clots which in primary vessels are hardened with formalin, but in secondary branches are currant jelly in character. Left lung shows a similar picture, containing, however, less fluid and lacking the shotty consolidation described.

Liver: Organ is rather poorly preserved; of normal size. On section the cut surface is not remarkable. The gall bladder contains estimated 70 cubic centimeters of a yellow brown watery bile with several granular jack stone black pigment calculi, measuring about .5 centimeter in diameter.

Spleen: Is firmly fixed with formalin; with tense, smooth capsule. On section shows follicles and trabeculæ moderately prominent.

Kidneys: The organs are of normal size; are firmly fixed with formalin. On section the pelves are dilated moderately and filled with a blood-stained thick fluid. The mucosa, notably on the right, is granular and apparently from its color had been injected, the color being a gray red. The right kidney is smaller than the left, and shows at upper pole a larger and several small cavities filled with a thick pultaceous material. The capsule peels with little difficulty from a smooth surface bilaterally. The right kidney shows beneath capsule about the cavities described several pin-head yellow areas which on section can be followed as streaks into cortex. The cortex measures .5 to .7 centimeter. Ureters are normal.

Bladder: Contains estimated 150 cubic centimeters of a thick viscid blood-stained urine. The bladder wall measures .8 to 1 centimeter in thickness. The wall is trabeculated. Mucosa shows no apparent injection. There is a definite ridge at internal meatus; wall dropping down for 1 centimeter below this ridge. The urethra laid open throughout its course shows no evidence of stricture or other obstruction.

Adrenals: Are moderately well preserved, show thickened cloudy cortex fusing with broad intermediate zone and small amount of medulla.

Prostate: Is normal.

Testicles: Are normal.

Penis: Shows no scars.

Scalp: Measures .4 centimeter; is not remarkable.

Calvarium: Measures 1 centimeter in frontal region, .4 to .5 centimeter in temporal region. Calvarium is extremely dense, shows no diploe.

Brain: Is of normal size and conformation. The pia arachnoid over posterior convexity shows a blood-stained watery fluid in small quantity. The lateral, middle and fourth ventricles are slightly dilated. The ependyma is smooth. The markings at the base are normal. The vessels at the base are normal. The pia arachnoid peels smoothly from frontal convolutions.

Base of skull: Is normal.

Incision into left hip and both knee joints discloses normal articular surface.

Spinal cord removed *in toto* shows rather marked adhesions crossing subdural space over lower dorsal and lumbar cord.

Careful inspection of bony thorax discloses no evidence of fractured ribs either recent or old. Each rib is followed individually throughout its course.

The vertebral column is intact.

Microscopical Examination. — Sections of the spinal cord stained by Weigert's method show remarkably good preservation. The posterior columns show degeneration throughout. The most marked process appears in the columns of Coll, where the degeneration is total. The columns of Clarke and Burdach show less marked processes. The ventral field is unaffected. The posterior roots show varying degrees of degeneration, the process being uneven but reaching practical totality in some areas.

Opinion. — The autopsy findings in this case are typical of locomotor ataxia due to syphilitic infection. The death was due immediately to acute edema of lungs and brain related to dilatation of heart. Behind this is the infection of the bladder and kidneys which usually occurs as a terminal process in locomotor ataxia. The condition of the surface of the body was such that the scars of operation wounds for hernia were not made out. There was found no evidence of recent or old fractures of ribs. (The St. Luke's Hospital record refers to a fractured rib in the history, presumably given by patient on his visit to the hospital for the second time, Nov. 11, 1914.)

St. Luke's Hospital records indicate a triple positive Wassermann reaction in the spinal fluid and a questionable single positive Wassermann in the blood at the time of the first visit of the deceased to hospital, May 21, 1914. The blood gave a triple positive Wassermann on his second visit, Nov. 11, 1914.

From the hospital records it is apparent that deceased had a syphilitic

infection far enough advanced in his spinal fluid on May 21, 1914, to furnish a strong Wassermann reaction. It is impossible to believe that syphilitic infection was not present on March 28, 1914, the day of his accident. With such infection focussing itself in his spinal cord, unsteadiness on his feet would necessarily follow.

The progress of the case from this time forward is typical of a rapidly progressing locomotor ataxia, and corresponds to the findings in the spinal cord at autopsy.

It is my opinion that the fall which deceased suffered on March 28, 1914, arose as a result of his unsteadiness due to the disease (locomotor ataxia) with which he was afflicted. It is also my opinion that the fall did not aggravate his disease nor accelerate his death, which was due to a terminal infection with pus germs in his bladder and kidneys; this infection arose because of the bladder paralysis, which was due to the locomotor ataxia from which he suffered.

TIMOTHY LEARY.

The report of Dr. Daniel J. Fennelly, who was appointed as impartial physician by the Board to examine the deceased, was before the committee, a copy of which follows: —

REPORT OF EXAMINATION OF PETER PETERSON OF 452 PARK STREET NEW BEDFORD, MASS.

Age: 47. Occupation: conductor.

Family history: Negative.

Past history: negative, of peculiar gait and some trouble with legs.

Present injury: On March 28, 1914, in trying to help passenger on a car while the car was in motion, both he and the passenger were thrown to ground. He was brought to St. Luke's Hospital, where it was discovered that he had two ribs bruised and one fractured; left hip bruised and a double inguinal hernia (double rupture). Was operated on for rupture on May 21, 1914, by Dr. Gardner. Left hospital on June 17, 1914. After operation he says he developed incontinence of urine. Now under treatment by Dr. Perry who has given him salvarsanized serum intraspinally.

Physical Examination: Fairly well-developed and nourished man. Pupils Argyll Robertson, sluggish reaction to light, react to distance sluggish. Tongue central, no tremor. Heart and lungs normal. Patient unable to walk; both legs spastic. Right greater than left. Knee jerks increased. Kinkle jerks increased. Ataxia of both hands and feet marked. Sensation dim over both legs in front to groin and in back to mid thigh. In places in this area he can feel pin prick slightly. Band of increased sensation just below umbilicus in front about 1 inch in width, and in back, at fourth lumbar vertebra, slight increase in sensation also. This condition has improved considerably during last few weeks. No control over urine or bowels.

Diagnosis: Transverse myelitis of the spinal cord. Not complete. (Specific.)

Prognosis: Bad for recovery; considerable improvement may occur but it is doubtful if it would be lasting, as the disease process will continue to destroy more tissue, and he has had the benefit of all possible treatment.

Summary: The exciting cause of this man's condition was the accident with the confinement in bed, it being positive that he had a syphilitic disease of his spinal cord which remained dormant until the accident, which caused a lighting up of the process either by direct injury or by the period of being in bed. Dr. Perry gave him the "606" salvarsanized serum, and he seemed to do well at first but now is about at a standstill, and I think further treatment would not help him in any way, save to help in preventing extension of the process by giving him antilenitic treatment.

DANIEL J. FENNELLY.

OCT. 26, 1914.

Dr. Daniel J. Fennelly testified substantially as follows at the second hearing: That in obtaining the history from the man he got the evidence which has been described, and also facts in regard to his gait having been unsteady, which goes with locomotor ataxia, and this led him to look for the thing in the physical examination, and seeing the case with Dr. Perry, and knowing he had given the salvarsanized serum into his cord, he naturally looked for a paralytic condition of the legs secondary to the disease, which was present. In locomotor ataxia the disease may remain dormant, that is, the symptoms may not be very active for years, and may go along without lighting up into a severe process, which this man showed. It could be brought about either by an accident or by a period in bed following the operation. He stated that locomotor ataxia was a disease which interferes with walking mainly, because it affects the sensory part of the cord, — the part which tells the muscles what to do. It is not motor in any way except there is an interference between the pressure that goes to the brain and one that gets back to the muscles. A person tells himself to walk, which he may think is automatic, but it is not. In this art reflex the sensation from the sensory part of the cord to the brain goes back into the muscle. In this disease there is an interference in this art; in this particular case that interference was a process of the cord. Apparently it became worse, following this accident he had, by the stay in bed. He

was not sure which had the most to do with it. The treatment which was given is a new treatment, "606." When there is a terrific reaction a serum is put in. He thought that sometimes this has a great deal to do with the disease lighting up in the manner it does. The story he got was that he did well for a time after the injections and then apparently did not gain at all. He stated that he made the diagnosis as to what he thought was present; that his conclusions were practically the same as Dr. Leary's; that his diagnosis was transverse myelitis; and that the symptoms are practically identical to locomotor ataxia. He did not think he found any thing the matter with his rib; it was impossible to have a fractured rib heal without having callus appear; it was impossible to have a crack without its showing at autopsy. He thought the microscopical examination agreed absolutely with the findings one would get in this disease. He thought Dr. Leary's report showed the man's condition was more advanced than he thought it was. He was of the opinion that having seen the man as long as he did, and getting the type of history he received, he was suffering from this disease for a number of years; that it is, at least, ten years after the infection before ataxia and unsteadiness set in. The man himself admitted he had a peculiar gait at the time some years before that, and he told him things, which he, the witness, didn't put in the report, with reference to having difficulty in walking. The deceased had told the doctor about striking on his heels when he walked; that he didn't know how long he had had this; that this was a manifestation of syphilis. It was possible that he had had this from three to five years preceding. He thought the diagnosis according to the autopsy finding was definitely locomotor ataxia and not myelitis, because it involved the cord as well as the covering to the cord. He considered it was impossible to ascertain how long he would have lived without the fall, because no two cases of syphilis affect the cord in the form of locomotor ataxia in the same manner. The autopsy showed that certain columns of the cord were involved; that his condition was a most serious one. The witness changed his opinion in view of the evidence, and considered this was a chronic disease of the cord which had been present for years, slowly progressive. In this case the

brain was prevented from being affected, but sometimes a person afflicted with this disease gets into a severe mental state; this man died after receiving the benefit of everything that was possible; he probably would have died anyway, as far as he could ascertain. He did not see how one could trace this back to the accident, except that it was a natural tendency for one to connect anything like this with an accident.

The committee finds on the weight of the above testimony, medical and otherwise, that the system of the deceased employee was on March 28, 1914, affected by the constitutional disease, as described in the medical evidence, to such an extent that it had affected the spinal cord, having passed through the covering and caused a degeneration of the cord itself; that the progress of the disease had been such before the date of the injury; that it had caused him trouble in the use of his legs and feet, and in the function of his bladder; that on said date it was not in a dormant condition; and that he died on Jan. 6, 1915, as a result of the long progress and process of this disease, not aggravated or accelerated by the injury of March 28, 1914. The committee further finds the compensation due to the employee during his lifetime by reason of the injury itself was fully paid, the last payment having been made on Oct. 2, 1914, at which time all incapacity resulting from the injury had ceased; and that as the death was not the result of the injury no compensation is due by reason thereof.

DAVID T. DICKINSON.
EDWARD W. YOUNG, M.D.
BENJAMIN F. KING.

CASE No. 1459.

EILEEN FORRESTALL, *Employee.*
BART MANUFACTURING COMPANY, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

INCAPACITY FOR WORK. UNREASONABLENESS. EMPLOYEE ACCEPTS SETTLEMENT AS ARRANGED BY BOARD AND AGREES TO RETURN TO WORK. FAILS TO KEEP AGREEMENT. IS ACTING UNREASONABLY. COMPENSATION TERMINATED.

The employee received a personal injury which left her with a slight condition of sensitiveness in the injured hand. Compensation was paid by agreement to a certain date and the employee agreed to return to work. Notwithstanding the agreement, the employee did not make any attempt to resume employment, and applied for further benefits.

Held, that the employee had acted unreasonably in not making an attempt to perform work.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Eileen Forrestall *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1459 on the files of the Industrial Accident Board, reports as follows: —

The arbitration committee, consisting of Thomas F. Boyle of the Industrial Accident Board, chairman, Judge E. Leroy Sweetser, representing the employee, and W. Lloyd Allen, representing the insurer, heard the parties and their witnesses at City Hall, Everett, Mass., on Friday, April 2, 1915, at 2 P.M.

Gay Gleason appeared as counsel for the insurer. The employee was unrepresented by counsel.

The question in this case is whether the employee is entitled to further compensation from Nov. 16, 1914, on account of the injury which she received.

The employee was injured on June 8, 1914, and was paid compensation from the fifteenth day after the injury up to Nov. 16, 1914, at the rate of $4 a week. At a conference which was held on Dec. 18, 1914, she stated that she would return to work provided her rights under section 10, Part II.,

would be reserved, but notwithstanding this she has made no attempt to work up to the present time.

The testimony was substantially as follows: —

Eileen Forrestall testified: —

The reason I have not worked is because my hand has not been strong, and my mother did not think it well enough to go to work. Whenever I would go out in the cold my hand would get numb, and I have not been able to use it. Dr. Donoghue examined my hand on the day of the conference on December 18, at which time I told him I would look for work. I have asked down at the shop for work. I did not go down personally, but I telephoned down. I have not tried any other place for work. At that time the insurance company paid me $40. They gave us a receipt to sign, but it was not a settlement receipt. I was examined by Dr. Donoghue on Nov. 11, 1914, and a copy of his report was sent to me. I do not know whether Dr. Donoghue said I could go to work or not, but I think his report said something about going to work. I did not personally try to get work, but my mother telephoned down to the shop. I occasionally asked one of the girls who worked down at the shop how the work was, and she said that the work was dull. When I hurt my hand I was attended by Dr. Conroy and Dr. Keeney. Dr. Conroy treated me up to the latter part of July, 1914. Sometimes on a warm day my hand gets numb and sore. The only treatment I am having at present is massage. I have been paid in all twenty-one weeks' compensation at $4 a week, making $84. At the time I was hurt I was working on a press machine and was making $5 a week. The only work I am doing now is work around the house, that is, dusting or making beds, or something like that. My hand does not trouble me when I am doing light work, but I cannot lift anything heavy. I drop most of the things that are heavy. My hand is just about the same as it was last November. The day that I was going back to work I was sick. When I have any leisure time I often go in and play the piano. When Dr. Donoghue examined my hand he spoke of my having another operation performed, that is, having the cords cut so that the fingers could be strengthened.

Peter J. Conroy, M.D., testified: —

This girl came into my office in June with a cut right across the back of her right hand at the wrist, her first finger mangled, and the cords of her second and third fingers severed. I put these cords together, and at the present time she has got good use of that hand. She has a pretty fair grip, although the hand is not normal to-day. I would not advise another operation because the scar from this cut might be worse than that of the last. I think she ought to try to do some light work, because she might lose that sensitive condition by exercising it. I told her to keep exercising the hand and it would gradually become more limber. I would not advise too heavy work.

Margaret Forrestall, mother of the injured employee, testified: —

I went down myself to the shop around Christmas to see about work for my daughter, but Mr. Ellis said that they were taking stock and did not need help then. After Christmas the shipper happened to come into my house to use the phone, and he told me then that there was not any work down at the shop because it was so cold that they were putting in heating apparatus. When it became real cold the weather affected my daughter's hand, and I did not think I should send her to work with her hand looking the way it did. Her hand is not strong now. There is not a time that she takes up a dish that she does not drop it. Before she had the bandages off her hand the insurance company wanted her to try to work. When I received the $40 from the insurance company I would not have signed the paper if I thought it was a settlement. I wanted to make sure that it was not a settlement for the full amount of compensation my daughter was to get. I thought it was back compensation, as I did not consider my daughter's hand well, and thought she should get more out of it. I understood, according to what Mr. Bradshaw said, that Mr. Ellis was going to put her to work on something easy, but the more the girl worked around I could see that her hand was not strong, and I did not feel like sending her to work. On November 3 Mr. Bradshaw made arrangements for her to go to work the next day, but she was sick in bed that day with a sore throat and cold, and was sick for the rest of the week. When I saw Mr. Parks of the Board I do not remember that I agreed to send my daughter to work. I simply listened to what he had to say in regard to the law. Mr. Bradshaw made arrangements for her to go to work on a Wednesday, and the following Monday I went down to the shop to find out whether or not they were working. If my daughter had gotten light work to do she would have tried it.

Mr. Ellis of the Bart Manufacturing Company testified: —

This girl worked for me at the Bart Manufacturing Company, and operated a press machine with which she cut cardboard. She has not applied to me for work since the accident. I can give her a job to-day at $5 a week. We closed down during the week of Thanksgiving and three weeks from Christmas week. We closed down for two weeks, and the piping was not finished so we had to close for another week. At the present time I could put her on tying string, taking account of stock, etc. The day that she said she was coming back I told the forelady to give her work of taking stock or keeping account of the work the girls did. Because she was hurt in the factory I always felt as though I really ought to keep her, and she was always a good girl. I do not believe that Mrs. Forrestall called me up during the stock-taking time, because I was bothered so much that I would not answer the phone until the stock taking was over. I

think I remember one time that Mrs. Forrestall did call me up about work. I never put a girl on a machine unless she is willing to go. She could earn as much tying up string as she could running a machine.

Richard Whipple testified: —

I am a caretaker of property, and I have been at the home of Mrs. Forrestall on business and I have seen the girl. I have been to the house twice, and each time I went to the house the mother of the girl complained about the girl's hand. One time I was there the girl came in. It was quite a cold day, and she complained of her hand being sore. It was purple, and she said that every time she would go out in the cold her hand would turn that color and get numb. I told her mother that she ought to see the Accident Board about it. She said that she had been there and gotten a settlement and that she was not satisfied. One day I met her in Pemberton Square, and she said she was going up to the Industrial Accident Board, and asked me if I would go with her. She said at that time that she did not know how she stood, whether she had signed her rights away or not.

Thomas W. Bradshaw testified: —

I am assistant superintendent at the Employers' Liability Assurance Corporation, Ltd. This case was brought to my attention on November 3. According to the doctor's report this girl was able to work, but she did not show any inclination. I saw the mother on November 3, and I went up to the Industrial Accident Board with her. I asked her about her daughter's going back to work, and she said that she would not let her go back and work for the people she worked for before, and then she said that she would not let her go back and work on the press. I tried to see a member of the Board, but I could not see one, so I asked her mother if she would let her go back to work if I got her a position. I called up Mr. Ellis at the Bart Manufacturing Company, and he said he would put her on light work the next day. I called up Mr. Ellis a few days afterwards and he said that the young lady did not show up. The next thing I knew she was at the Board again and Dr. Donoghue had examined her, and then she asked for arbitration. Finally the matter was put down for a conference between Mr. Boyle, the employee and myself. I went into the matter very fully at the conference on December 18, and Mr. Boyle explained the situation to her and told her that I was not obliged to pay her any more money. Mrs. Forrestall seemed particularly well satisfied with the payment of compensation for a further period of ten weeks, which we offered her at that time. She said at my office that same day that the girl was going back to work and that she was very well satisfied with the settlement. She did understand, however, that if anything came up in the future which prevented her daughter from earning her own living the case might be reopened, but outside of this she absolutely thought that the case was closed up.

The committee of arbitration finds upon all the evidence that the employee has not acted reasonably in attempting to secure and perform any work of which she is capable, and therefore finds that no compensation is due her on account of her loss of wages to the date of this hearing. The committee recommends that she at once endeavor to obtain any employment which she can perform, leaving it open to her to come before the Industrial Accident Board on review of weekly payments, if it proves that she cannot earn her old rate of wages after resuming employment.

THOMAS F. BOYLE.
W. LLOYD ALLEN.
E. LEROY SWEETSER.

CASE No. 1460.

HELEN M. QUILTY, *Employee.*
UPHAM BROTHERS COMPANY, *Employer.*
NEW ENGLAND CASUALTY COMPANY, *Insurer.*

DURATION OF INCAPACITY. FLOATING KIDNEY. AWARD FOR STRAINED BACK.

The employee strained the muscles of her back while operating a billing machine, and compensation had been paid up to the time of the hearing. She had been told that she was suffering from a floating kidney, but there was no evidence of it.

Held, that compensation should continue.

Review of weekly payments before the Industrial Accident Board.

Decision. — The Industrial Accident Board finds that compensation ceased on definite date.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Helen M. Quilty *v.* New England Casualty Company, this being case No. 1460 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, Leo J. Dunn,

representing the insurer, and John P. Meade, representing the employee, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Brockton, Mass., on Monday, April 5, 1915, at 10.30 A.M.

Robert B. Eaton appeared as counsel for the insurer.

The employee, while working on a billing machine, strained the muscles of her back and right side. Compensation has been paid from June 9, 1914, at $4 a week. The question before the committee was as to the duration of incapacity.

The employee testified that she still suffered much pain in the back and in the right side, especially when she tried to do anything, when she walked for any distance, or when she was on her feet for any considerable length of time. She tries to do work around the house, such as sweeping, but the pain which she suffers compels her to quit in a short time. She has been told that she has a floating kidney, and that an operation will be necessary to cure her.

Dr. Russell F. Sheldon testified that he made an examination of Miss Quilty for the insurer on January 7, with her own physician present. He could find no evidence of a floating kidney. The motions of her back were fairly free, and he thought then that she would be able to work in from four to six weeks.

Dr. J. J. McNamara of Brockton, appointed by the Board as an impartial physician under the provisions of section 8, Part III. of the act, examined Miss Quilty on February 6, and reported as follows: —

> I find this girl is unable to work on account of pains in her back. After eliminating the following characteristic symptoms of displaced kidney, which are: epigastric pains (she has none), dragging pain in the loins, and pains like nephritic colic (she has none). There is no sense of moving body in the abdomen; no aggravated indigestion or vomiting, in fact, she says she eats better than ever; no cardiac palpitation; she is not nervous, — therefore I come to the conclusion that the cause of her disability is the strained back muscles, caused by her peculiar work. This girl has been told that she has a displaced kidney, and the mental effect of the same is apt to have some bad results.

The chairman of the committee of arbitration appointed Dr. J. W. Sever to make an impartial examination of the em-

ployee, and after such examination on April 29 Dr. Sever reported as follows: —

I examined Miss Helen Quilty, on April 29, and I also studied Dr. McNamara's reports of February 10 and 24, 1915.

She seems to be in good general condition, but complains of much pain in the right side in the region of her appendix scar. There did not seem to be any definite or conclusive evidence from her story that she had a "dropped kidney." I could find no evidence on physical examination of a floating or a displaced kidney. She did have some slight tenderness in the region of her appendix scar, but other than that the examination was practically negative, except that she stood with rather a flat back.

It was impossible for me to come to any definite conclusion in regard to her kidney condition. She has no symptoms which are definitely referable to her kidney. Miss Quilty's general condition seemed to be excellent, and she stated that she felt a good deal better then she did last fall, and felt that she was gaining, although when she tried to do embroidery, sweeping, dishwashing or any other various household duties she immediately had pain in the back, which she found she could control if she took care to lie down as soon as it started. Walking apparently does not bother her very much. She has not tried to work since the condition arose last year.

The corset she is wearing is not a very good one. She could be made much more comfortable in a proper corset, which, combined with back massage and exercises, would probably improve her condition considerably.

The only definite way to find out whether or not she has a floating kidney is to send her to some man, expert in the X-ray diagnosis of floating kidneys, who can make a proper and adequate examination. Clinically she has not got it. I see no reason why at present she should not do ordinary stenography and typewriting. I cannot conceive of anything in her condition to prevent her doing it.

JAMES WARREN SEVER.

Upon consideration of all the evidence the committee of arbitration finds that aside from the mental effect, caused by the advice that she is suffering from a displaced kidney, the employee is suffering from a genuine physical disability in the nature of lameness of the muscles of the back which totally incapacitates her for her usual work; that this disability was caused by her employment; and that, therefore, she is entitled to continuing compensation at the rate of $4 a week while such total disability lasts.

This decision and all findings regarding compensation, or

the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

FRANK J. DONAHUE.
JOHN P. MEADE.

Leo J. Dunn dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim, for a review under Part III., sections 7 and 12, having been filed, the Industrial Accident Board heard the parties and their witnesses at the Hearing Room, Industrial Accident Board, New Albion Building, Boston, Mass., on Thursday, July 15, 1915, at 2 P.M., and finds and decides as follows: —

The report of the committee of arbitration, containing all the material evidence before that committee at the hearing in Brockton on April 5, 1915, was before the Board and, in addition, the following evidence was presented, which, together with that reported by the committee, is all the material evidence in the case.

Dr. Francis D. Donoghue, medical adviser of the Board, testified as follows: —

I have looked over the medical evidence, looked over all the billing machines in the John Hancock Mutual Life Insurance Company, and have gone to Stoughton to examine the billing machine on which Miss Quilty worked. There is nothing in the work of operating a billing machine that would in any way affect the kidneys. At the John Hancock Mutual Life Insurance Company, where a careful record is kept of the sickness of the girls, under the direction of the company's medical director, there has been no case in which there was any specific injury to a girl operating a Fisher billing machine, except the ordinary lameness that comes to some of the girls when they are working on the older type of machine similar to the one which Miss Quilty operated. But this wears off when the girls become accustomed to the work.

All kidneys are movable. In 20 per cent. of females the right kidney is movable more than the left. A floating kidney is congenital. It comes from the way the thing develops, and is distinct from a movable kidney. The kidneys are attached below the diaphragm, and rest upon a shelf,

bowing out of the ribs, hollowing out of the abdominal cavity. When there is an alteration in the type of the back, the back gets strained, the girl gets round-shouldered. Instead of having a normal curving, a hollow in the back, the back becomes straighter. Sometimes the kidneys are more movable than where they have a shelf to rest upon. They are held in place both by the shelf they are on and by the surrounding fat, by certain ligaments, and by the pressure of the abdominal contents, representing, perhaps, 15 pounds to the square inch.

In looking over all the evidence I find that this is a case of a girl who was not strong enough for the work she was doing, putting a greater strain on the back muscles outside of the spinal column and those inside on the belly side than they could stand. The period of disability here would be represented by the time necessary for those muscles to quiet down and take up their work again. There is no disability as far as her kidney is concerned. It is not movable to the point where it can kink the ureter and cause symptoms; and as far as the X-ray shows now, it is in its normal position. Being in normal position, the way to hold it there would be to wear snug fitting corsets with a pad to the right side; and there would be no increase in its mobility. As we breathe the kidneys move up and down about an inch or two; and with the hand on the kidney through an abdominal incision its mobility can be extended to three or four inches and still be normal.

As far as this case is concerned there seems to have been a strain of the back muscles of the trunk. Her story of where the pain comes and the way it comes is entirely consistent with muscle strain. I think if the girl had work that would keep her busy, had a good fitting corset and shoes with heels on, she ought to be able to go back to work. She has had a run-down condition, coming from chronic strain resulting from a job that was a little too much for her, and has gone through a surgical operation which was more or less debilitating. It depends upon the desire and persistency of the girl to overcome a condition which she has gradually run into, as to her ability to work. Muscular strain, and perhaps running down at a job that was a little too much for her muscular and nervous strength to handle, is the cause of her condition. The vomiting is apparently associated with indigestion; it represents a lack of nervous tone, a lack of punch in her general makeup. The effect of the muscle strain might well be responsible for the condition she describes, of being laid up for two or three days at a time with a severe backache. My best advice would be that she take up stenography and typewriting again and see how she comes out.

The Industrial Accident Board finds upon all the evidence that the employee, Helen M. Quilty, has been totally incapacitated for work by reason of physical conditions due to the personal injury of May 26, 1914, to date, July 15, 1915, and

that said total incapacity for work as a result of the injury probably will continue for a further period of four weeks from July 15, 1915, that is, until Aug. 12, 1915, to which date the insurer should pay compensation at the weekly rate of $4, at which time all compensation should cease unless otherwise decided by the Industrial Accident Board.

DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1463.

ELLEN E. WHALEN, *Employee.*
MEADE & WHITE, *Employer.*
ÆTNA LIFE INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. ARTHRITIS IN FINGER JOINTS OF EMPLOYEE WORKING AS AN IRONER NOT AN OCCUPATIONAL HAPPENING.

The employee, who had been an ironer for thirty years, had worked for the insured for seven months. She suffered with and was treated for arthritis of the finger joints, a rheumatoid affection due to bacterial infection.
She quit work because of some words with her boss.
Held, that there was no causal connection between her occupation and the disease.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Ellen E. Whalen *v.* Ætna Life Insurance Company, this being case No. 1463 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, Asa S. Allen of 31 State Street, Boston, Mass., representing the insurer, and Henry E. French of 33 Tyler Street, Boston, Mass., representing the employee, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, New Albion Building, Boston, Mass., Jan. 29, 1915, at 10 A.M., and Feb. 1, 1915, at 9.30 A.M.

William M. Vincent appeared as counsel for the insurer. The employee was unrepresented.

The question involved is whether or not Ellen E. Whalen received an injury arising out of and in the course of her employment. The insurer, the Ætna Life Insurance Company, denied all liability, claiming that Mrs. Whalen's condition was not caused by her employment.

No compensation has been paid to the employee.

Ellen E. Whalen testified that she had been an ironer for twenty-five or thirty years, and had been employed by Meade & White from April 12, 1913, to November 23, 1914; that she pressed curtains, using an 18-pound iron, and that she had to wet and wring out a cloth to put over the curtain when pressing it. Two or three weeks before she left a wringing machine was bought for her use. She went to Dr. James E. Dorcey on Oct. 1, 1914, and he diagnosed her trouble as rheumatism in the hands caused by contracting heat and cold. He prescribed for her and advised that she give up work. She had remained out because of her hands the day before she finally quit Meade & White's, and the next day, after some words with Mr. Meade over her being out, she quit the job. She had not tried to get any work since because she did not have to work, and, anyway, she knew she was not able to.

Dr. James E. Dorcey testified that he had treated Mrs. Whalen on October 1, and several times thereafter up to Jan 1, 1915. She was suffering from rheumatism caused, in his opinion, by the nature of her work. The growths on her fingers were not uncommon in people over forty years of age.

Dr. Harry H. Hartung testified that he had examined Mrs. Whalen for the Ætna Life Insurance Company on Jan. 27, 1915. She was suffering from arthritis deformans, a frequent condition in a woman of her age and class and condition in life. It is due to a germ infection, and inflammation in the gall bladder is the probable cause of infection.

Dr. Francis D. Donoghue examined Mrs. Whalen at the hearing, and testified that the condition that existed was arthritis which is a rheumatoid affection but not rheumatism. Dr. Day's statement, "working in a damp place with damp things may cause a flare-up of a pre-existing condition, but it

does not cause the condition," means that it causes a temporary soreness. These thicknesses on the fingers of men and women come irrespective of the place in which they work. There was nothing in this woman's occupation peculiar to this disease. It is not related to an occupational happening at all; it is a thing that comes in the ordinary working life of individuals who use their hands. It is not disabling. It is common with men and women who work with their hands up to forty or forty-five. He doubted if there were any working men after the age of forty-five but had some trace of it. Infection of the tonsils would cause it. A person that is constipated might get it and his fingers swell up. When the infection is removed and bowels are cleaned, it cleans the rheumatoid. In reference to tenderness over the region of the gall bladder, if that tenderness means inflammation, inflammation means a certain amount of infection, and a certain amount of infection means a certain amount of poisoning. This woman has such a little rheumatoid in her fingers that he did not think the gall bladder had a lot to do with it, but the mouth condition as described by Dr. Day would account for the small amount she has. Decayed teeth is one form of infection, and with decayed teeth there is inflammation, so that infection can pass through into the system. Nodes come from continual use of the hands and finger joints into which infection settles as a predisposed spot; putting her hands in water and then using a hot iron was incidental to the development of occupational nodes.

Report made on Dec. 14, 1915, by Dr. Hilbert Day, impartial examiner appointed by the Board, is as follows: —

There are small nodes or deposits of lime near the terminal distal joint of the right ring finger and the second joint of the right index finger, and practically all the terminal joints on the fingers of the left hand. These nodes are not particularly large or disfiguring or disabling. No signs of present inflammation.

Before discussing this case it is fair to the Board to tell them that rheumatism and rheumatoid affections are distinctly due to bacterial infection. This infection may get into the system in many ways, either through the tonsils, through the teeth or through the intestinal tract. It is true that working in a damp place with damp things may cause a flare-up of a pre-existing condition, but it does not cause the condition. In Mrs. Whalen's case she has several facts which might predispose

her to rheumatoid infection. Chief among them in my mind are her present and probable past carious teeth. There is also the questionable attack of tonsillitis a year ago, and besides that she has a condition of chronic constipation. The fact that her gall bladder is tender makes me think that she has some infection there, and if she has a focus of infection in one place she can easily have manifestations of it elsewhere. Therefore I feel that I am justified in saying that her trouble with her hands was not caused by her occupation, though it may have helped it to become manifest.

The committee of arbitration finds upon the evidence that the claimant is suffering from arthritis; that there was no causal connection between her occupation and said arthritis, but that it is something that comes in the ordinary working life of a person of her years; furthermore, that it is not disabling.

The committee finds, therefore, that Ellen E. Whalen is not suffering from an injury arising out of and received in the course of her employment, and therefore is not entitled to compensation.

FRANK J. DONAHUE.
ASA S. ALLEN.
HENRY E. FRENCH.

CASE No. 1471.

MARY HANLEY, DAUGHTER AND DEPENDENT OF COLEMAN FOLEY (DECEASED), *Employee.*
BOSTON ELEVATED RAILWAY COMPANY, *Employer.*
MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DEATH RESULTS FROM THE INJURY. DEPENDENCY. EASING NATURE. LEGITIMATE INTERRUPTION OF EMPLOYMENT. EMPLOYEE LEAVES PLACE OF EMPLOYMENT TO EASE NATURE. NEAREST CONVENIENCE STATION LOCATED SOME DISTANCE AWAY. CUSTOMARY TO MAKE USE OF MOST CONVENIENT PLACE. EMPLOYEE ACTED REASONABLY AND WITHIN SCOPE OF EMPLOYMENT. COMPENSATION AWARDED.

The employee left his place of employment for the purpose of easing nature, and went to the nearest and most convenient place for that purpose, a garage. In so doing he acted in accord with the custom among his fellow employees,

who, according to the trackmaster, were expected to find the nearest place. "It is the custom," said the trackmaster, "when the company has made no provision for toilet facilities, for a man to walk off without asking any questions." He stated, further, that the employee "did what was a perfectly proper thing to do." While in the garage the employee was struck by an automobile and killed.

Held, that the employee's death arose out of the employment.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Mary Hanley, dependent of Coleman Foley, deceased, *v.* Massachusetts Employees Insurance Association, this being case No. 1471 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, representing the Industrial Accident Board, chairman, Philip Mansfield of Boston, Mass., representing the dependent, and Meyer Sawyer of Boston, Mass., representing the insurer, heard the parties and their witnesses at the New Albion Building, Boston, Mass., on Friday, Feb. 26, 1915, at 10 A.M.

The employee, Coleman Foley, had occasion to enter the building of the Autocar Sales and Service Company for the purpose of easing nature, having been obliged to leave his place of employment for that purpose on Oct. 28, 1914. While in the building he was struck by an auto truck and sustained injuries which resulted in his death on Nov. 5, 1914. His average weekly wages were $15.58. The insurance company declined to pay compensation to Mary Hanley, the widowed daughter of the deceased, who lived with him at the time of his death, and the insurer raised two questions: whether or not the injury arose out of and in the course of the employment of Coleman Foley, and whether or not the claimant, Mary Hanley, was a dependent.

Mary Hanley, daughter of the deceased, testified that she had lived at home all her life; that she married Edward Hanley eighteen years ago and continued to live with her father and mother during her marriage, board being paid at that time. Her husband died ten years ago. As long as the mother lived, after her husband's death, she worked at different places, paying $5 a week for her board. Her mother died four years

ago. Then she kept house for her father, at his request; she was the only one who could have done it at that time. Agnes was small and the other girls were married; the father had asked her to keep the home together and look out for him and Agnes. He had not said he would pay her anything to do so; she agreed to do it. After the mother died her father turned into the home $12 a week, and she managed on that. Agnes worked and turned in $4 a week, except when her father had to "loaf" during the winter, when she would turn in all she earned. On a visit to the hospital, after her father was injured, she had asked him what had happened, and he told her that he wanted to go to the toilet and went into a garage, and in going in or out (she did not remember which) a car backed in the garage and pinned him against the wall. He asked some man on the job about the matter, and he was told that he could go in there. Her father was not able to talk much; he was suffering and was under morphine all the time. Before her mother died, and while she was doing housework for a family in Dorchester for $6 a week, she did not board at home, but paid $5 into the home to help out. When her father did not work, after the mother died, she helped to serve dinners and luncheons in private families, earning $2 each day. During the year previous to her father's death she thought she might have worked a month off and on, on different days; she did this work only when her father was at home out of work. She has not worked since her father died. Previous to her father's death, when Agnes earned $7.50 and gave it to her, she gave her $2 back for her own use; if she needed extra money she would give it to her. She did not consider that she made any profit on what Agnes gave her; she fed her and looked out for her; she came home to three meals a day. She is paying $14 for rent now; she had paid $18 for a place just three weeks before the injury. She felt that Agnes was helping to support the home, and that it was better to have her with her; it cost a little more to run the home for three than for two, but Agnes was willing to give the money, and was not one who wanted a great deal of it back. Being asked if she thought that the extra cost of her sister's board and clothing more than equaled what she paid into the home, she said she did not think so;

she thought she paid no more into the home than covered the cost.

Agnes Foley, a daughter of the deceased, testified that she felt she was helping out by working and turning her money into the home; she did it for her father's sake; she had sacrificed clothes and everything else to give this money, and she felt that there was no loss in her being a third party in the home; of course, there could not be a great amount of profit from a girl earning small pay.

Patrick F. Corliss, a trackmaster of the Boston Elevated Railway Company, testified that Mr. Foley worked under him, as his boss, on the day of the injury. He had been sent up to Beacon Street, and the foreman there put him to watching some iron on the side of the street, to prevent accidents to teams, etc. Ordinarily, the hours of watching are from 6 in the morning until 6 in the evening, — twelve hours; the employee can sit down and eat his dinner and be paid for the noon hour. Mr. Foley had worked many years for the company, for twenty years or more, and had reached the age when he could not do heavy lifting, and had been given such work as cleaning lanterns and watching a hole or switch or iron lying on the side of the street. There was no toilet or urinal provided by the company at the immediate place where the employee was working. The nearest place of the company was at the Massachusetts station, Boylston Street, quite a distance from where he was working. It is the custom, when the company has made no provision for toilet facilities, for a man to walk off, without asking any questions; the company never made any agreement for the men to go into private property; they are expected to find the nearest place. So far as he knew, Mr. Foley did what was a perfectly proper thing to do. The Massachusetts station could be reached by a car going down through the subway, a run of about half a minute or a minute; he had a pass to use when riding. There were no rules of the company on the subject at all. The place where Mr. Foley was working was about directly opposite the garage, perhaps at a slight angle of 45 degrees, at the side of the building; he was at about the middle of the square, opposite the building of the Autocar Sales and Service Company.

There were warerooms in front on the lower floor; he had not been in the building. Mr. Foley was working about 40 feet from the building and about 60 feet from the place where he would have had to take the car. The only time when it would be necessary for a man to ask permission to leave would be when he was watching a hole and it would be necessary to put a man in his place. Mr. Foley was quite an old man and did not move very fast, which was the reason he was given light work, although he could walk all right. In his opinion, it would probably take five minutes for a man to walk to the car, board the car and ride to the toilet provided by the company. That was the first day on that job, and he could not say whether Mr. Foley knew about the place in the subway or not. He had worked in that vicinity in July and August, when the tracks were being changed for the cars to run into the subway.

Joseph B. Meehan, an employee of Jordan Marsh & Co., testified that he had been sent to the Autocar concern to learn to be a chauffeur. He had been out with Mr. Jameson, a demonstrator, who had come back to get instructions for the day's work; when Mr. Jameson received his orders he told him to get on the car and back out again; it was a straight line to the door, but he had never reversed a car before; he had been out only twice before in two weeks. After the car was cranked he let out the emergency brake, putting his foot on the clutch, and the clutch jumped in, throwing the car forward toward the partition. He heard the man holler; he was pinned between the partition and the guard in front of the car; he had not seen him before. He had run the car in to the further end from the alleyway; the alleyway was about 30 or 35 feet, but it was not used as a public street. The garage is behind the salesrooms; the door leads off the private way. Mr. Foley was struck near the door leading into the corridor where the toilet was, the door opening on Beacon Street; it looks like an entrance into the building.

Nelson Jameson, a chauffeur of the Autocar Sales and Service Company, testified that he did not see Mr. Foley before he got on the seat and told Mr. Meehan to back the car through the garage. The car jumped out and pinned Mr.

Foley against the wall; it was only a second after he saw him; he was practically in front of the car; one step would have taken him there. He was near the door running into the hallway; the toilet is right opposite that door. He said he had seen conductors and motormen running in there all the time in the last month or so, but not before the date of the accident; they came in through the front door. The fellows who put their trucks up there came through the garage door. Before the accident he had not noticed particularly whether any workmen went there or not; he is sometimes out of the place two or three weeks at a time.

James J. Crowley, garage foreman of the Autocar Sales and Service Company, testified that he was in his office at the time Mr. Foley was injured; he heard him holler and went out; he did not see the accident. He had given men permission to use the toilet, but he always sent them around the front way. There was no arrangement with the Elevated people at that time to permit the men to use it, but since then the crews have used it, coming in through the front door. The garage is dangerous; it is a service station, and there is traffic there all the time. There are no special instructions as to the use of the toilet; if Mr. Foley had come to him that morning he would not have refused him the use of the toilet, but he would not have allowed him to go through the garage. It would be pretty hard for men to go in there without his knowing about it, but they may have done so and could do so.

It is a well-established principle of workmen's compensation law that an employee is acting within the scope of his employment, not only while engaged actually in performing his duties in accordance with his contract of hire, but also during intervals or breaks in the employment, provided he uses such intervals in a reasonable manner.

The evidence shows that the employee acted reasonably and within the scope of his employment when he left it for the purpose of easing nature. He "asked some man on the job" if he could use the lavatory at the garage, and was told that he could, according to the evidence of his daughter, Mary Hanley, and it was customary for men to use the lavatory for that purpose, according to the evidence of James J. Crowley,

the foreman in charge. There was no rule concerning its use by other than employees, the foreman, Crowley, stating, however, that he always instructed the men to go to the front door, thus avoiding danger of injury by accident in passing through the busy garage. The employee, Foley, had not received any instructions as to the manner in which to approach the lavatory, his statement to his daughter, Mary Hanley, being that he had asked a man on the job concerning its use.

The garage was located immediately adjacent to the place at which he was performing his work. The nearest convenience station was located in the subway at Massachusetts Avenue, but there was no evidence to show that the employee, Coleman Foley, had any knowledge of the existence of this station. The trackmaster, Patrick F. Corliss, stated that he "could not say whether Mr. Foley knew about the place in the subway or not; it is the custom, when the company has made no provision for toilet facilities, for a man to walk off without asking any questions." The men were expected, according to the trackmaster, to find the nearest place. So far as the trackmaster knew, "Mr. Foley did what was a perfectly proper thing to do." The convenience station in the subway could be reached only after a delay of about five minutes.

The evidence shows further that the claimant, Mary Hanley, was wholly dependent for support upon the deceased, Coleman Foley, at the time of the injury, having kept house for him for the past four years, under circumstances almost identical with those referred to in Herrick's Case, 217 Mass. 111. Mary Hanley had been married, but her husband had died about ten years ago. Subsequently, she worked until her mother died, about four years ago. Then, at her father's request, she kept house, without wages, and was his housekeeper at the time of his death. Her sister Agnes also worked, and when her father was employed paid her board at the rate of $4 weekly; if her father was not employed she turned her wages into the family fund for the purpose of helping in the support of the family. The employee gave his daughter, Mary Hanley, $12 a week when working, and the evidence showed that he had worked for a period of nine months during the year preceding his death, the sum contributed by him being

used for the support of the family. All the support received by the said daughter came from the employee, and at the time of the injury she was wholly dependent upon him for support.

The committee of arbitration finds upon all the evidence that the employee, Coleman Foley, was within the scope of his employment when he left it for a reasonable purpose on Oct. 28, 1914, to wit, to ease nature; that the said employee acted reasonably when he selected for use the lavatory in the garage immediately adjacent to his place of employment rather than the nearest lavatory of his employer, at Massachusetts Avenue; that the fatal injury received by him on that occasion arose out of and in the course of his employment; that the claimant, Mary Hanley, was in fact wholly dependent for support upon the employee; and that the said Mary Hanley is entitled to a weekly payment of $10 for a period of four hundred weeks from the date of the injury, that is, from Oct. 28, 1914, the total sum due under this decision being the maximum compensation of $4,000.

JOSEPH A. PARKS.
MEYER J. SAWYER.
PHILIP MANSFIELD.

CASE No. 1472.

STEFAN DOMBROUSKI, *Employee.*
WEST BOYLSTON MANUFACTURING COMPANY, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

DURATION OF INCAPACITY FOR WORK. PLANT SHUT DOWN FIFTEEN HOURS WEEKLY FOR PERIOD. EMPLOYEE HAS BADLY MAIMED HAND. UNABLE TO OBTAIN OTHER EMPLOYMENT. LOSS OF OPPORTUNITY TO EARN BY REASON OF INJURY AND SHUTDOWN CONSIDERED IN MAKING AWARD. COMPENSATION AWARDED FOR WAGES LOST DURING SHUTDOWN PERIOD.

The employee had sustained a serious injury to the right hand, the thumb and first three fingers having been amputated. Work was furnished which he could perform at a lower rate than that earned by him prior to the injury. After-

wards, business conditions being subnormal, the plant shut down for a period of seventeen weeks on Fridays and Saturdays. The employee claimed compensation on account of loss of ability to earn on the days of the shutdown period. He was unable to obtain employment elsewhere in town.

Held, that the employee was entitled to compensation, as claimed.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Stefan Dombrouski *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1472 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Richard A. Hennessey, representing the employee, and Thomas H. Kirkland, representing the insurer, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Springfield, Mass., Tuesday, March 30, 1915, at 3 P.M.

E. A. McClintock appeared as counsel for the employee, and T. H. Maher appeared for the insurer.

The above-named employee was injured Oct. 7, 1913, as a result of which his thumb and first three fingers of the right hand were amputated. His average weekly wages were $8.25, and he was paid specific compensation at the rate of $4.13 for twenty-five weeks, total amount being $103.25. He also received compensation for disability at the rate of $4.13 from Oct. 21, 1913, up to Jan. 6, 1914, amounting to $45.43. From January 6 until March 17, 1914, he remained away from work from his own choice. He returned to work for the West Boylston Manufacturing Company on March 17, 1914, receiving from the insurer partial compensation at the rate of 38 cents per week up to April 19, 1914, on which date he resumed his regular work at the same wage that he received before his injury, viz., $8.25, and is at the present time doing this work and receiving this wage. The employee claims that between the dates of July 18, 1914, and Nov. 29, 1914, he worked only two full weeks, the remaining seventeen weeks working only four days a week, and that he is entitled to compensation for this lost time.

Matthew Smith testified that he is and was at the time of Mr. Dombrouski's accident foreman of the West Boylston Manufacturing Company; that Dombrouski was injured Oct. 7, 1913; that he returned to work March 17, 1914, and worked five weeks, getting $7.50 for those five weeks, as he did not go back on the frames and was a spare hand around the room; that during these five weeks Dombrouski came to him and said he thought that he could go back and run his frames, and that he, Smith, told him that he could go back and run the frames the next Monday morning; that Dombrouski went back on his regular work the week ending April 25, 1914, at his regular wage of $8.25; that from this time up to July 18 he worked full time; that the week ending July 18 he went on four days a week, which continued until November 28, with the exception of two full weeks which he worked during this period. He further testified that in this department where Dombrouski worked there were 131 or 132 other employees, but only 1 other man doing the same work as Dombrouski, although there were 7 men doing practically the same kind of work; that the whole department where Dombrouski was employed was on short time during this period; that Dombrouski worked as many days as the other employees; that the other man doing the same work as he was on short time, and that he lost two weeks more than Dombrouski on account of the depression; that there was work for Dombrouski every day that the mill was running that he wanted to work; that he is a good, reliable boy; that the West Boylston Manufacturing Company manufacture tire duck for automobiles; that Dombrouski worked nine and three-fourths hours every day except Saturday, when he worked five and one-fourth hours, earning $0.1528 per hour.

We find on the weight of the evidence and the surrounding circumstances that Stefan Dombrouski is entitled to recover compensation at the rate of $0.1528 per hour during the time when the West Boylston Manufacturing Company was working on short time, beginning with the week ending July 18 and continuing until November 28, with the exception of two full weeks which he worked during that period; that, as the concern was shut down nine and three-fourths hours on Friday and

five and one-fourth hours on Saturday, he is entitled to recover fifteen hours each week at $0.1528 per hour for seventeen weeks, because by reason of the injury to his hand he could not get work elsewhere, although he had looked for it, and as Easthampton is a small place there were few opportunities for him to secure work; and that he is entitled to recover $19.48 (seventeen weeks, fifteen hours per week, at $0.0764 per hour) as compensation for this lost time.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

DUDLEY M. HOLMAN.
RICHARD A. HENNESSEY.
THOMAS H. KIRKLAND.

CASE No. 1476.

EDWARD FALLON, *Employee.*
JOSEPH A. WICKS, *Employer.*
NEW ENGLAND CASUALTY COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. OCCUPATIONAL DISEASE. PLUMBISM OR LEAD POISONING. LOANED EMPLOYEE. CLAIMANT WAS ORDERED TO REPORT FOR DUTY TO ANOTHER EMPLOYER FOR ONE DAY. BECAME INCAPACITATED FROM LEAD POISONING ON THAT NIGHT. WAS EMPLOYEE OF SUBSCRIBER. COMPENSATION AWARDED.

It appears that the employee had been ordered to report, by his employer, to another employer for one day, and that on the night of that day he became incapacitated for work by reason of a condition of plumbism. Claimant had been employed previously by subscriber as a painter.

Held, that the claimant was an employee of the subscriber's and entitled to compensation.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Edward Fallon *v.* New England Casualty Company, this being case No. 1476 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Meyer J. Sawyer, representing the employee, and Leo J. Dunn, representing the insurer, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Somerville, Mass., on Wednesday, Jan. 27, 1915, at 10 A.M.

Robert B. Eaton appeared as counsel for the insurer. The employee was not represented by counsel.

Edward Fallon, on Nov. 23, 1914, was taken with an attack supposed to be lead poisoning between the hours of 6 and 8 P.M. The insurer raised the issue that Fallon was not working for Joseph A. Wicks where he had been accustomed to work, but had worked that day for a man by the name of Dennis Cahill, and was, as a matter of fact, in Cahill's employ on that day. They denied liability on the ground that Fallon was not in the employ of their assured, Joseph A. Wicks.

It was agreed that Fallon's average weekly wage was $18, or $3.28 a day.

Edward Fallon testified that he was employed as a painter by Joseph A. Wicks on Nov. 23, 1914. He had worked for Mr. Wicks since a year ago last September; he could not remember the date, but it was after Labor Day. He had not had what one could call steady or regular employment. Prior to Nov. 23, 1914, he had worked for Mr. Wicks since the spring. November 23 was Monday, and he worked for him on the 21st, Saturday. He was paid off on Saturdays. He was not discharged at that time. He expected to go to work for him on Monday and did go to work on Monday, but Wicks sent him to another man. He went to Wicks' shop on Monday to work for him on the job, and when he arrived a man was there with a note for him, telling him to go to work for

this man for the day and help him out. The man's name was Dennis Cahill, and the note said, "Ed, you will go to work for Mr. Cahill to-day and oblige me. Yours truly, J. Wicks." He supposed that Mr. Wicks was to pay him for that day. There was nothing said in the note about who was to pay him, and he supposed that he was simply loaned for the day, as had frequently happened before. When he finished that night he expected to return to work for Mr. Wicks the next day. On November 23, about 6 o'clock in the evening, he commenced to feel sick. His leg troubled him somewhat; his arm was stiff — had been stiff all day, and his hands were kind of numb. He went home, thinking it would wear away, and went to bed about 8 or 9 o'clock that night. In the morning his hand was so stiff that he could not open it, and he could not stand on his leg. He told his wife to call the doctor, which she did. When the doctor came he told him he felt numb and that he had lead poisoning again. He had had a touch of lead poisoning about three years ago. The symptoms were the same as they were at the present time — stiffening of the arms and muscles, and costive pains in the stomach. The doctor prescribed some medicine for him and said he had lead poisoning. He has worked as a house painter for thirty-one or thirty-two years. He mixes his colors, and he mixed his own paints when he was working for Mr. Wicks. It did not occur to him that after having one attack of lead poisoning he was liable to have another if he continued at the same work. He knew he had to work at something, and there was nothing else for him to do. He has never had any other trouble, except the grippe, or a slight cold. He does not drink a great deal. He has worked for Mr. Wicks, off and on, for the last eight years. When he left Mr. Cahill that night he said he was all through with him. He paid him that night — told him to call at his house.

Dr. William Lee Cowles testified that this case came to his attention on November 24. Fallon gave him a history of the muscles of his hands and forearms being stiff for several days previous. At this time he complained of inability to use those muscles, especially those of the left side, and of inability to stand. If he would take a step he would fall over — he could not support himself. He said he was constipated; that he had

colic pains, and gave a history of having a previous lead colic and pains similar to what he has at present. Examination showed a deformity in the right eye; he claimed that he had an ulcer on the eye which produced this condition. His eyes reacted to light and accommodation. His teeth were poor.

On the margin of the gums, by placing a piece of paper between the gums and the teeth, he could see a blue line which is found in lead poisoning. His chest was negative; heart 78; temperature normal. He had a slight wrist drop, which increased. He was unable to grip his hand to any slight degree. On November 26 his temperature was normal, that is, 98, pulse 78, respiration 24. He responded to treatment for lead poisoning. The blue line, he would say, would clear up — depending on how much lead he had in his system — in two or four weeks. The blue line was not well marked; it was only a faint line, and he thinks it cleared up very quickly. The wrist drop was not marked. He had symptoms of apoplexy, being affected more on his left side, but the way he responded, the wrist drop and the blue line would tend to rule out apoplexy. His arteries were thickened, but they were not what might be called arteriosclerosis. Fallon is fifty-six years old. To sum up, the doctor's opinion is that the man is suffering from lead poisoning. He rules out apoplexy. Lead brings on arteriosclerosis very frequently. He did not find that this man had any marked arteriosclerosis. The doctor saw him on November 26, 28, December 8 and January 16. Considering the fact that the man has worked as a painter for thirty odd years, it is not surprising to find that he has an attack of lead poisoning. The man is not able to work now at house painting. His nerves are affected; he has lack of co-ordination. The factors which led him to believe that the man had lead poisoning were the wrist drop, blue line on the gums, the history of colic and pains and stiffness in the forearm and hands. The only two factors to which wrist drop might be due are apoplexy and lead poisoning, but he never saw a case of wrist drop or a blue line in apoplexy. The man could have lead poisoning and arteriosclerosis also. When he first saw him he would say he had acute lead poisoning. A person who has had an attack of lead poisoning is susceptible to another

attack. Regarding the future prospects, he would say, without being definite, that the man will get well; he certainly has improved to a marked degree. He would say it would only be a question of a few weeks before he would be back to his normal condition. It is possible to have cases of lead poisoning without having the nerves affected, but in this case the nerves were affected. Assuming that there had been a condition of arteriosclerosis and not of lead poisoning, the treatment given by the doctor would not clear it up. Arteriosclerosis is a hardening of the arteries, and that causes a rupture of the arteries.

Joseph A. Wicks testified that he is in the painting business. He did not pay Fallon for his day's work on November 23, that day on which he worked for Mr. Cahill. That which Mr. Fallon stated in regard to the note is substantially correct. He has let Mr. Cahill have a man at times, and he always pays them. He employs his men as he needs them. He was on his last job at the time Mr. Cahill asked for a man, and he thought he would let one of his men go because he had five or six on the job, and he thought four men could finish the work. He would have taken Fallon back if he had the work. He never discharges a man; he might lay him off, and before the week is over employ him again. If Mr. Cahill had not wanted a man Fallon would have worked for him that day. Fallon was simply following Mr. Wicks' directions. Fallon went to work for him some time in June. There is not much work in the winter, but Fallon would average three or four days out of the week. If Mr. Cahill did not pay Fallon, he supposes he would look to him, Wicks, for payment.

Dr. Russell F. Sheldon testified that he examined Fallon on December 8. At that time he saw no lead line on the gums. He found increased reflexes on the left side; his co-ordination then was pretty good; he could stand with his eyes shut without swaying; blood smear showed no anemia; his diagnosis was cerebral hemorrhage due to arteriosclerosis. He did not find the wrist drop, and Fallon did not complain of any severe colic. Alcohol is given as one of the factors in the production of arteriosclerosis; he would say lead was a factor. It would not be surprising that he did not find the blue line on the gums

and the other symptoms when he examined him, as Dr. Cowles had treated him for lead poisoning. He thinks it would be surprising that the wrist drop cleared up, as that is about the last thing that clears up. He would say that the man was suffering from cerebral hemorrhage, showing the effect in his left foot. You cannot rule out lead poisoning.

We find, on the weight of the evidence and the surrounding circumstances, that Fallon was in the employ of Joseph A. Wicks; that nothing was said by his employer to him to indicate that he was discharged, or that anything else had been done except that he had been loaned for a day to accommodate a man whom it was customary to accommodate in the same way. His employer agreed that this man was not told anything different, and that the note Mr. Fallon said he received was substantially correct. There was no question in the mind of Fallon that he was an employee of Wicks. He went with Cahill because he was told to in a written letter of instruction by his employer. His employer testified that if Cahill had not wanted a man that day he would have kept Fallon on, as they were just finishing the job. Fallon testified that he never knew that he had changed masters, and the evidence all indicates that this was true.

We find, therefore, that he was an employee of Joseph A. Wicks on Nov. 23, 1914. We further find, on the weight of the medical evidence, that while in his employ he received a personal injury, to wit, lead poisoning, which arose out of and in the course of his employment, and which totally incapacitated him; that from the date on which he ceased work, Nov. 23, 1914, to the date of the hearing he has been totally incapacitated and is still totally incapacitated for work; and that he is entitled to medical treatment during the first two weeks, and to the payment of compensation beginning with the fifteenth day after the accident up to and including the date of the hearing, a period of seven and three-sevenths weeks, at the rate of $10 a week, amounting to $74.29, said payments to continue during the period of total incapacity for work.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts

warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

DUDLEY M. HOLMAN.
MEYER J. SAWYER.

Leo J. Dunn dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, April 1, 1915, at 10 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that the employee, Edward Fallon, received a personal injury arising out of and in the course of his employment, by reason of a condition of lead poisoning, while in the employ of the subscriber, Joseph A. Wicks, said personal injury incapacitating him for work on Nov. 23, 1914, and being the result of the accumulation of poisoning from the lead in the paint which the employee used in the course of the performance of his contract of hire with said subscriber during the period of more than six months preceding the date upon which he became incapacitated for work.

The Board finds upon all the evidence that the employee, Edward Fallon, was totally incapacitated for work by reason of a condition of lead poisoning on Nov. 23, 1914, said condition being a personal injury which arose out of and in the course of the employment of the said employee by the subscriber, Joseph A. Wicks; that said total incapacity for work continued to Jan. 27, 1915, the date of the hearing before the committee of arbitration, at which time the future period of incapacity was indeterminable; that the average weekly wages of the employee were $18; that there is due the employee a weekly

compensation of $10 during the continuance of his total incapacity for work as a result of the injury, the amount due to Jan. 27, 1915, being $74.29; and that there is due, also, a reasonable allowance for medical treatment during the first two weeks after the injury.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1477.

JAMES MCHALE, *Employee.*
FORD MOTOR COMPANY, *Employer.*
NEW ENGLAND CASUALTY COMPANY, *Insurer.*

INCAPACITY. SCALP WOUND DUE TO BLOW FROM AUTOMOBILE BODY. ARISING OUT OF THE EMPLOYMENT. DID NOT INCAPACITATE EMPLOYEE FOR WORK. SUPPURATION OF MIDDLE EAR NOT DUE TO INJURY.

While loading automobile bodies into a freight car employee received a scalp wound by reason of a body toppling over and striking him on right side of head. He went back to work in five days and continued to work until almost a month later when he was laid off because his left ear was running. Two weeks later, when he returned to resume work, he was discharged.

Held, that the suppuration of the middle ear is not an injury arising out of his employment.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appealed to Supreme Judicial Court.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of James McHale *v.* New England Casualty Company, this being case No. 1477 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, Ernest B.

Porter, 56 State Road, Revere, Mass., representing the employee, and Leo J. Dunn, Ames Building, Boston, Mass., representing the insurer, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Cambridge, Mass., on Monday, Feb. 1, 1915, at 2 P.M.

Robert B. Eaton appeared as counsel for the insurer, and Robert T. Healey appeared for the employee.

The claimant, James McHale, was the only witness.

The fact was not disputed that on May 7 last, while loading automobiles into freight cars, at the factory of the Ford Motor Company, the body of a car toppled over and struck him on the right side of the head. He was treated the same day at the Cambridge Relief Hospital, and the record of the hospital — put in evidence — showed that he had suffered from a scalp wound in the right parietal region, which had been treated by cleansing, clamping and dressing. He returned to work on May 11, worked that week and the next, five days in the week of May 25, and a full week the week beginning June 1. He worked on Monday, June 8, then was laid off for two weeks. When he went back to the factory to go to work on June 22 he was told his services were no longer wanted.

James McHale testified that he quit work on June 8 because his left ear had begun to run and was bothering him considerably. He was indefinite concerning the time when his ear trouble started, first stating that the ear had begun to run about six weeks after the accident, later, about two weeks afterwards, and finally, that it had happened just prior to his quitting work on June 8. He had been treated once at the Boston City Hospital for this ear trouble. This was in June. He had had no other treatment for any of the troubles of which he complained since that given him at the Cambridge Relief Hospital on the day of the accident. Since being discharged by the Ford Motor Company he had sought no employment until recently, and then had not been able to obtain any. He felt he was unable to work, as his ear was running, and he was suffering from pain in the head, and when he stooped down the blood rushed to his head and "it seemed as though needles were going right through."

Dr. Frederick J. Cotton, appointed by the Board as the im-

partial physician to examine McHale, made such examination on Dec. 15, 1914, and reported as follows: —

On examination of the left ear I find there has evidently been suppuration, but I am not enough of an ear shark to have a right to report on an ear examination.

It seems to me that the man has been frightened about the ear, which is apparently a chronic middle ear suppuration which should be treated, but gives no definite disability, even while under treatment. He has had no treatment and no examination of the ear at all until a few days ago. I think he has been afraid to go to work on account of it. He strikes me as being a little demoralized, and I think the best thing he can have would be an ear doctor and a job. I see no causative relation between the trauma and the ear.

Dr. G. V. Buehler of the Cambridge Relief Hospital, who examined McHale on Dec. 5, 1914, at the request of the insurer, reported as follows: —

I do not believe this trouble with his ear had any association with the accident in May, and would result independently of it. His story is very inconsistent with one having a severe trouble, as it is not very likely that he would have allowed it to go on without care or treatment, and he admits having no one else treat him except the one visit to the City Hospital after the accident. The wound on the head has left no traces, and it was difficult to find the scar. The injury was of such a trivial nature that it required only one clamp, and I do not think it is possible that it is causing him any headache or disturbance at the present time.

The committee of arbitration finds that the injury which the claimant suffered on May 7, 1914, did not incapacitate him for work; and that the trouble which he now claims to be suffering from is not an injury arising out of and in the course of his employment; therefore he is not entitled to compensation.

FRANK J. DONAHUE.
LEO J. DUNN.

Ernest B. Porter dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, March 18,

1915, at 3 P.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that the employee, James McHale, received a personal injury arising out of and in the course of his employment on May 7, 1914, by reason of a blow on the side of the head from the body of an automobile. The hospital record shows that he sustained a scalp wound and received necessary attention, returning to work on May 11, 1914. He remained at work thereafter, with the exception of one day, until June 8, 1914, when he was laid off for two weeks, and at the expiration of that time informed that his services were no longer required. Later, he claimed to have ear trouble which incapacitated him for work, but which the report of the impartial physician showed had no causal relation to the injury received on May 7, 1914.

The Industrial Accident Board finds upon all the evidence that all incapacity for work to James McHale, the employee, as a result of the personal injury received on May 7, 1914, ceased on May 11, 1914, the date of his return to work; that there is no causal relation between the ear condition which the employee claims to be suffering from and said personal injury; and that no compensation is due the said employee under the statute.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1478.

FRANCIS A. DOW, *Employee.*
CITY OF NEWTON, *Employer.*

ARISING OUT OF THE EMPLOYMENT. CLAIM FOR COMPENSATION. FAILURE TO FILE SAME. SUCH FAILURE DUE TO MISTAKE AND BELIEF THAT SUCH COURSE WAS NOT NECESSARY. EMPLOYER HAD NEGOTIATED WITH HIM IN REGARD TO A SETTLEMENT. EMPLOYEE TOTALLY INCAPACITATED FOR WORK. COMPENSATION AWARDED.

The employee received a personal injury arising out of his employment by reason of a fall from a ladder on which he was standing, his thigh and leg being injured and other injuries being sustained. He returned to work at the end of a week, still suffering from the effects of the injury, and remained for a period of about three months. Being obliged to give up his employment he negotiated with the city of Newton for a settlement, by correspondence, conference and appearance before a committee of the city government. Finally, a claim for compensation under the Workmen's Compensation Act was filed, and it was argued by counsel for the employer that the employee's claim was barred because it was not filed within the statutory period.

Held, that the employee was entitled to compensation.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Francis A. Dow *v.* City of Newton, this being case No. 1478 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Alfred G. Fearing, representing the employee, and Albert M. Lyon, representing the city of Newton, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Newton, Mass., on Wednesday, Feb. 10, 1915, at 10 A.M.

Elias B. Bishop appeared as counsel for the city of Newton.

This employee on Jan. 2, 1914, received an injury arising out of and in the course of his employment. His occupation was that of an engineer at the Technical High School. His average weekly wages at the time of the injury were $23.50.

Francis A. Dow, the employee, testified that he was the engineer of the Technical High School, Newton; that on Jan. 2, 1914, while repairing a valve which was about 15 feet above the ground, he fell from a ladder on which he was standing; that when he fell he struck a ledge, striking on his thigh and leg; that he then rolled on to the floor, striking on his right elbow, and, in fact, was bruised all over; that he was taken home in a carriage; that he was confined to bed for a week and was treated by Dr. Talbot; that at the end of a week he returned to work, although he was not able to do so, but felt that he ought to go back because it was in the winter time and his place was hard to fill; that Dr. Talbot recommended that he remain in bed for three weeks; that after he returned to work his back improved a little, but his right shoulder seemed to get worse; that whatever he did caused pain in this shoulder, and at night the pain was so intense that he could not sleep; that he kept running down hill, was nervous, and was so sleepy during the day that he could not keep his eyes open unless he stood up all day; that he was constipated and was feeling miserable; that he could not do hardly anything with his right hand; that he had to get boys to help him take out ashes and lift anything that required strength; that before the accident he had some kidney trouble and rheumatism, but not to such an extent as to keep him from working; that he also had some backache before the injury in the small of his back; that the backache since the injury is higher up; that he lost one or two days some years ago on account of sickness, and some years was not out from work at all; that he continued to work from Jan. 9, 1914, the date he returned to work after the accident, until April 18, 1914, when he resigned because he was not able to perform his work; that he gave Dr. Spaulding, the superintendent of schools, a month's notice that he was going to resign, and spoke to Mr. Newell of the public buildings department, some time in April, that he was going to resign on account of his health; that Dr. Talbot advised him to go down to Maine because the doctor thought he would gain faster if he went there; that he went to Cape Porpoise shortly after he resigned and is still living there; that his back-

ache is better at the present time, but his shoulder and arm are bad; that if he tries to lift anything or to chop wood his arm pains him, and at night he is unable to sleep because of the pain; that he has not been able to do any work to speak of since he left work in April; that he has been taking medicine prescribed by Dr. Talbot since he left work up to the present time; that he now does the chores around the house and takes care of sixteen hens; that he gets tired quicker and cannot perform a day's work the same as he did before the injury. On cross-examination Mr. Dow testified that he had kidney trouble before the accident; that this manifested itself, especially if he caught cold, by frequent passing of urine; that when he returned to work on Jan. 9, 1914, after the accident, he was hardly able to crawl over to the school and perform his work; that Dr. Talbot advised him not to return to work when he did; that he saw Dr. Talbot five or six times between January 9 and April 18, 1914; that he had worked for the city of Newton since 1900; that before that he was a photographer; that he has not tried to find any other work since April because he had not been able to; that he inquired of his uncle in Biddeford, Me., and a man in Kennebunkport, Me., if they knew of any light work he could get, and they told him that they did not know of any such work. In reference to making a claim for compensation, Mr. Dow testified that he went to see Mr. Slocum, who was the city solicitor, on April 11, and told him that he wished to enter a claim for his injury and that he had given notice that he was going to leave; that Mr. Slocum at this time was in a great hurry to get off to some appointment; that he called on Mr. Slocum again the Saturday before he left work; that at this time Mr. Slocum was also in a hurry and said that he would attend to it later; that he called on Mr. Slocum a third time before he went away and Mr. Slocum told him that he would have Mr. Fletcher call and see either the employee or Mr. Murray, an assistant in the Technical High School, in regard to it, and he, Mr. Slocum, also said that he would call up Dr. Talbot; and that he went down Maine after this and corresponded with Mr. Slocum several times in regard to his claim.

Several letters in regard to Mr. Dow's claim for compensation were introduced in evidence. The following are extracts from some of these letters.

This letter was written by Mrs. Dow, wife of the employee, in his behalf.

JUNE 15, 1914.

Mr. SLOCUM, *City Solicitor, Newtonville, Mass.*

My DEAR SIR: — Will you please tell me what the city is doing about Francis A. Dow's accident. You may think because he delayed advancing claim that it does not matter if it is delayed indefinitely, but that is a mistake. . . .

We are in straits and need money, and I resent being placed in such a position. . . . Mr. Dow is of such a temperament that he hesitated to put in a claim to the city lest it should look like asking for help, and you have evidently allowed this delay to militate against him, but it should not do so, and I look to you, as the city's solicitor, to bring this matter up for speedy adjustment.

EUGENIA LYON DOW.

JUNE 26, 1914.

MRS. FRANCIS A. DOW, *Cape Porpoise, Me.*

DEAR MADAM: — I received your communication of June 15 in regard to Mr. Dow's claim against the city.

I have already called the matter to the attention of the committee.

There is one thing which I would like to know, and which will aid me in pushing the matter to a determination; it is the amount which Mr. Dow thinks he ought to receive for his injury.

Please have him inform me in regard to this, and oblige

W. S. SLOCUM.

SEPT. 12, 1914.

Mr. W. S. SLOCUM, *City Attorney, Newtonville, Mass.*

DEAR SIR: — What have you done or decided on in regard to my claim for damages against the city of Newton?

I was injured January 2, and on account of injuries to back and arm had to give up work April 18 of this year, and my arm is still so lame that I can only do the lightest work, and it pains me all the time. Mr. Robert E. Grandfield, Secretary of the Industrial Accident Board, says he wrote the city of Newton on August 15 requesting them to pay me the compensation due under the act (Workmen's Compensation Act), and to notify him if it was not paid in a reasonable time, and request a hearing. . . .

FRANCIS A. DOW.

SEPT. 16, 1914

MR. FRANCIS A. DOW, *Cape Porpoise, Me.*

DEAR SIR: — I received yours of September 12 in regard to your accident and the question of compensation.

I have had the matter referred to the committee on claims of the board of aldermen of the city of Newton, and trust that they will take the matter up before long.

W. S. SLOCUM.

SEPT. 28, 1914.

MR. FRANCIS A. DOW, *Cape Porpoise, Me.*

DEAR SIR: — A hearing will be given by the committee on claims and rules at the City Hall, West Newton, on Thursday, Oct. 1, 1914, at 8 P.M., upon your claim relating to the accident which occurred in connection with the hand-feed gage in the engine room of the Technical High School, Newton.

If you are unable to be present I will endeavor to state your claim to the committee.

W. S. SLOCUM.

Mr. Dow further testified that the hearing on his claim was held on Oct. 1, 1914, and that he told the committee about his case.

Michael Murray testified that he saw Mr. Dow while he was on the floor, after he had fallen; that he was rolling over and moaning; that he was complaining principally of his back and shoulder; that he got a carriage and sent him home; that after Mr. Dow returned to work he had to have assistance in performing some of his duties; that he complained continually of his arm and shoulder after the accident; that he, the witness, noticed that the employee could not get around as quickly as he did before the accident.

Mr. Newell testified that he has charge of the mechanical plant of the Technical High School; that he had seen Mr. Dow for six years, and had never heard him complain of any trouble before the injury; and that he did not remember of Mr. Dow ever being out a day.

A letter from Dr. Talbot to Mr. Fearing, arbitrator for the employee, was introduced in evidence, of which a copy follows: —

Mr. ALFRED G. FEARING.

DEAR SIR: — I attended Mr. Dow after his injury at the high school, and I can assure you that the injury has not caused any imaginary suffering or disability. I know that he has not been able to do his accustomed work, and despite the fact that there is no visible evidence of injury to his arm and shoulder, he was injured and is suffering from the effects of that injury, and will continue to do so for some time yet. Nerve injuries are slow and painful.

G. H. TALBOT.

FEB. 9, 1915.

The following letter was received in evidence: —

Mr. Francis Dow was injured by a fall of about 15 feet from a ladder in the basement of the Technical High School on the 2d of January, 1914, and striking on his shoulder, fractured the tip, the acromion process, and badly bruised the shoulder, arm and back.

He was confined to the bed for a week, and was under my care until he was obliged to give up all his work at the school and rest absolutely.

He is suffering from a neuritis of the nerve of the arm and shoulder, and there is some withering of the muscles of the upper arm.

I feel that he will get well eventually, but it will be some time before he will be free from pain.

G. H. TALBOT, M.D.

OCT. 1, 1914.

Dr. Fred M. Lowe, called by the employer, testified that he examined the employee on Oct. 2, 1914, at Dr. Talbot's office, and could not determine what the trouble was with the arm and shoulder, so he took the employee to the hospital and made an X-ray of the employee's right shoulder; that the X-ray picture did not show any signs of a broken bone; that he did not agree with Dr. Talbot that the acromion was broken; that without an X-ray picture it was impossible to state whether or not the acromion process was fractured; that he found the difficulty with the shoulder was in the backward and upward swing of the head of the humerus; that he believed that the man did suffer pain; that this trouble may come from the bursa under the deltoid muscle; that this condition of the shoulder could be attributed to the accident, as a sudden wrench of the shoulder would cause such a condition; that the pain in the employee's shoulder is probably due to his rheumatism, bursitis and a strain of the ligaments; that he thought with proper treat-

ment the employee's shoulder would gradually recover; that he did not think the pain in the employee's back was from kidney trouble, as it is a well-known fact that kidney troubles as a rule do not cause any pain; that this pain in the back might be attributed to rheumatism; that the employee is rheumatic and the rheumatism jumps from one joint to another; that he examined Mr. Dow just before the hearing and found his right arm, with the arm partially flexed, measuring in the broadest part one-quarter of an inch less than his left arm; that he noticed a callus on the palm of the right hand between the middle and little fingers; that in his opinion the callus pressed on the tip of a nerve and caused the pain which the employee felt in his hand and in his arm as far as the elbow; that the pain in the biceps comes down from the shoulder; that he thought at the present time the employee could do his work as a photographer; that he could use the hand and arm a good deal in light manual labor, but would not be able to work with a pick and shovel.

The city of Newton, employer, requested the following findings of fact and law: —

1. If the employee suffered an injury on Jan. 2, 1914, even though it was one arising out of and in the course of his employment, and as a result of continuing in that employment the injury was aggravated, the employee is not entitled to be paid compensation under the Workmen's Compensation Act.

2. If the employee suffered an injury on Jan. 2, 1914, even though the injury was one arising out of and in the course of his employment, and if the employee is now suffering from that injury, yet if his present suffering is the result of continuing in his employment when he should have refrained from work, the employee is not entitled to be paid compensation beyond the period when he would, if he had taken care of himself, have recovered from his injury.

3. There is no evidence that the employee made claim for compensation with respect to such injury within six months after the occurrence of the same, and there is no evidence that his failure to make claim was occasioned by mistake or other reasonable cause.

4. The employee made no claim for compensation with respect to his injury within six months after the occurrence of the same, and he cannot maintain proceedings for compensation under the provisions of the Workmen's Compensation Act without affirmatively showing that his failure to make claim was occasioned by mistake or other reasonable cause.

5. The employee has not shown by affirmative evidence that his failure to make claim within six months after the occurrence of the injury was occasioned by mistake or other reasonable cause.

Request 1 is denied.

Request 2 is denied.

Request 3 is denied.

Request 4. The employee made no claim except as shown in the evidence. The remainder of the request is given.

Request 5 is denied.

The committee finds that the employee was wholly incapacitated for labor by the injury which he received in the course of and arising out of his employment on Jan. 2, 1914, from said Jan. 2, 1914, to Jan. 9, 1914, when he returned to his former employment as engineer, and that when he so returned to work he was still suffering from the effects of the injury and obliged to work with difficulty, but hoped that he would recover and that his work would aid him to do so; that his physician from whom he was receiving treatment did not directly advise him not to return to work, so that the employee's conduct in doing this was not unreasonable; that he continued to work at his former wage with gradually increasing distress on account of his injury and condition resulting therefrom until April 18, 1914, when he was obliged to give up work altogether by reason of the condition of his right shoulder and arm, weakness in his back, and considerable general weakness; that since leaving work on April 18, 1914, he has been under medical care, and has been totally incapacitated for performing his former work as engineer or for undertaking any physical labor; and that his right shoulder, arm and back have so interfered with his working capacity that he has not been able to do a laborer's work or obtain employment by reason of said injury and its results. The committee further finds that the employee is not barred from prosecuting his claim for compensation by reason of not having filed his claim therefor until the date of the hearing, and that his failure to file said claim before this was occasioned by a mistake on his part in believing that it was unnecessary through the conduct of the employer in its conferences, correspondence and negotiations with him, and in requiring him to appear before a

committee of the city government to present his claim, which he did, during the six months following his injury and thereafter, — and that all this amounted to a waiver by the employer of such time limit, and furnished a reasonable cause to said employee for not filing his claim within said six months.

The committee finds that there is, therefore, due the employee as compensation $10 per week from April 18, 1914, the date the employee stopped work, to Feb. 10, 1915, the date of the hearing, a period of forty-two and four-sevenths weeks, amounting to $425.71; and that said weekly compensation of $10 shall continue during said incapacity and his inability to obtain earnings as a result of said injury.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

DAVID T. DICKINSON.
ALFRED G. FEARING.

Albert M. Lyon dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, April 22, 1915, at 10.45 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that the employee received a personal injury arising out of and in the course of his employment on Jan. 2, 1914, by reason of which he was totally incapacitated for work to Feb. 10, 1915, the date of the hearing before the committee of arbitration, with the exception of the time from Jan. 9, 1914, to April 18, 1914, during which he earned full

wages. The total incapacity for work resulting from the injury was a continuing condition, the period of its duration not being determinable at the date of the hearing.

The employee did not act unreasonably in endeavoring and continuing to endeavor to perform his work during the period from Jan. 9, 1914, to April 18, 1914, and his failure to file a written and formal claim for compensation within six months from the date of the injury was occasioned by mistake and the belief that such a course was not necessary, in view of the continuance of negotiations between himself and the city of Newton, beginning prior to the expiration of six months from the time of the injury and continuing at intervals thereafter.

The Industrial Accident Board therefore finds, in accordance with the decision of the committee of arbitration, that a weekly payment of $10 is due the employee during the period of forty-two and four-sevenths weeks intervening between April 18, 1914, and Feb. 10, 1915, in amount $425.71, during which time the employee was totally incapacitated for work by reason of the injury; and that said weekly compensation of $10 shall continue until the award is modified, after due hearing on review, under Part III., section 12, of the statute.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1481.

CARL T. LARSEN, *Employee.*
EVERETT F. ANNIS, *Employer.*
FIDELITY AND DEPOSIT COMPANY OF MARYLAND, *Insurer.*

INCAPACITY. FRACTURE OF THE SKULL. PARTIAL INCAPACITY FOR PART OF TIME. TOTAL INCAPACITY OWING TO HIS INABILITY TO GET WORK BECAUSE HE COULD DO ONLY CERTAIN KINDS OF WORK ON ACCOUNT OF HIS CONDITION.

While working on a staging, painting, employee was struck in head by falling staging hook. The blow fractured his skull. Insurer paid one week's compensation. Employee returned to work, but was obliged to quit because of dizziness;

thereafter did odd jobs. Secured steady job, but could not stand heat of place where he had to work, and quit. In winter he could not get any work because only steady employees in summer are retained in winter. He could not work steadily in summer because of inability to work in high places.

Held, that his inability to get work was due to his injury.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Carl T. Larsen *v.* Fidelity and Deposit Company of Maryland, this being case No. 1481 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, Addison M. Goldsmith of 14 Park Road, Winchester, Mass., representing the insurer, and Walter Isidor of 108 Humboldt Avenue, Roxbury, Mass., representing the employee, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, New Albion Building, Boston, Mass., Saturday, Feb. 27, 1915, at 2 P.M.

Wm. H. Lewis and I. H. Fox appeared as counsel for the employee, and Albin L. Richards appeared as counsel for the insurer.

The employee was injured on April 21, 1914, while working on a swinging stage, the staging hook falling and striking him on the head and fracturing his skull. He was paid one week's compensation at $9.02, one-half of his average weekly wages.

The question was as to the duration of incapacity.

The material evidence was as follows: —

Dr. Lafayette Lake of the Cambridge Relief Hospital testified that Larsen was brought in on the day of the injury. He had a lacerated wound of the scalp and depressed fracture. He was confined to the hospital from April 21 to the 29th. When he left the wound had nearly healed, and he was in good physical condition. He was advised to rest for a week before returning to work. He came daily, up to May 5, to have the wound dressed, and in the two weeks following made

two visits to the hospital. When last seen Larsen was able to do his work, and the doctor saw no effects or trouble from the injury. When first brought into the hospital he saw symptoms that Larsen was a man addicted to the use of alcohol. He knew this because the record shows that one-half an ounce of whiskey was prescribed on his admission to the hospital, and this was to be given every three hours. This is the usual procedure in the case of a man suspected of the use of alcohol. Symptoms shown in such cases are general nervousness, irritability and noncompliance with requests. An alcoholic man may or may not be subject to headaches, and he is oftentimes more apt to better stand the rays of the sun than one not affected by the use of alcohol. Larsen is much thinner at the present time than he was when in the hospital, but there was nothing in the injury or in the operation to cause this loss of flesh. An alcoholic might develop a nervous condition causing him certain fears. The symptoms which Larsen shows are not due to the injury or the operation. Personally, the doctor knew nothing of the subjective symptoms of alcohol. The wound was over the parietal lobes which have to do with the motions over the body. He did not think that the fracture disturbed any brain centers. The bone was pressed down upon the dura, but that organ was not injured. A head injury causes lessened tolerance to alcohol. If the motor center were affected, this would cause inability to work in high places, and would manifest itself in inability to control voluntary movements. There was no hemorrhage of the dura.

Everett F. Annis, in whose employ Larsen was working at the time of the injury, said that the injured man had been working for him about four months. He knew that he drank occasionally because he smelt liquor on him. From the 10th of March work was steady, and Larsen worked steadily up to the time of the injury. Any liquor that he drank did not affect his work. He would not employ a man affected by liquor. Larsen came back to work about two weeks after the injury and worked for about two weeks. He left on a Saturday night. The following Wednesday or Thursday he called up and said he met somebody and "slopped over," but would come back if wanted. He spoke of having another job in view, and was told that he had better take it. As painters go, he regarded

Larsen as a sober man. He would know if he were a periodical drinker. Larsen did not appear perfectly well when he returned after the operation, but did a good day's work, and appeared to desire to work.

Dr. William C. Mackie, examiner for the Fidelity and Deposit Company of Maryland, testified that he had examined Larsen on April 27 and July 5, 1914, and Jan. 19 and 20, 1915. In his opinion he was not suffering from the injury. If everything else could be eliminated as to the cause of the symptoms described by Dr. Courtney he would say that these symptoms were probably due to the injury. The man had no physical disabilities except what he complained of subjectively. The only symptoms Dr. Mackie found could be attributed to alcohol, syphilis or fracture of the skull. On January 19 he noticed signs of alcohol on Larsen. His face was flushed, and there was an odor of alcohol on his breath. He told Dr. Mackie that since the injury a small amount of liquor made him crazy drunk; that he could not stand as much as he could before.

Elmer E. Hayford testified that he was a painter and worked with Larsen on a job last June, painting two towers, which Larsen had undertaken on a subcontract. He said Larsen could not sit in the boatswain's chair, complained of headache, and seemed slow to comprehend. He was by no means as efficient as he was before the accident. It would not be safe to work on a staging with a man in his condition. He had worked with Larsen before the latter was injured, and he never knew him to drink to excess. He was regarded as a very capable man. A painter who could do only limited work in the summer months would be unable to get work in the winter, as only the larger master painters keep their men steadily during the winter months' period, and a man in Larsen's condition, because of his restricted ability, could not get work with a big shop.

Carl T. Larsen, the injured man, testified that he had been a painter for twenty-four years, doing all kinds of work, — roofs, ceilings, common house painting, inside and out. He had first tried to work with Mr. Annis after his injury, but found that he could not do a day's work. He felt weak and tired, had headache all the time, and could not work on a staging unless it was very low down. After leaving Mr. Annis

he went to work for Charles A. Sjobeck, and worked about a week. He worked for Sjobeck's son off and on, whenever the latter had anything to do, — the last time was around Thanksgiving, when he had a few days' work. Sjobeck would have given him more work then, but it was work on skylights and windows, which he could not do because of his inability to work in high places. During the summer he had worked at the Fore River Shipbuilding Company for four or five weeks he thought, although he was not sure of the length of time. He was employed in painting doors on ships. He got $20 a week there until his discharge. The work was all right, but the place was too warm, and it made him very dizzy. He had to come up on deck frequently to get fresh air, and get steadied up so he could stand. He also suffered from frequent headaches and dizziness. He was discharged because of his inability to keep steadily at work. Sjobeck's was a small shop without much work, but because he could not do general work it was the only place where he could secure employment. He had tried to secure work in a good many places. If he could get inside work he would be able to do that, but he could not stand outside on a staging. He thought he had been employed about twelve full weeks since his injury. He had had no trouble with his head before the accident, and could do any kind of work. He had had no medical treatment since he left the Cambridge Hospital, but treated himself with headache powders, pills, etc. If he were in his normal condition and able to do all kinds of work he would be able to secure work in the winter time, but master painters will not employ a man in the winter who is not able to work in the summer.

The employee was examined on Jan. 30, 1915, by Dr. J. W. Courtney, an expert neurologist, appointed by the Industrial Accident Board as an impartial physician under the provisions of section 8, Part III. of the Workmen's Compensation Act. Dr. Courtney's report was as follows: —

At your request I yesterday examined Carl T. Larsen of 556 Massachusetts Avenue, Boston. I found that the original injury consisted of a depressed fracture of the skull in the right occipital region; that the depressed portion of bone had been raised and removed; and that, at the present time, there is an irregularly pentagonal-shaped area — about 2 inches by 1 inch — in which the above-mentioned bone is missing.

I found also that Larsen suffers from headache, inability to stand the sun's rays and fear of high places, — all well recognized consequences of the sort of injury he received.

As to prognosis, it will be a year at least before the headaches and intolerance of the sun's rays disappear. I doubt if the patient ever gets back enough courage to resume work on high places.

Investigation by an inspector of the Board showed that Larsen since his injury had been employed as follows: by Mr. Annis, from May 5 to June 2, 1914, four weeks; by Charles A. Sjobeck, 83 West Concord Street, Boston, one week in all, employment being at odd times, at 44 cents per hour; by the Fore River Shipbuilding Company, from June 22 to Aug. 29, 1914, ten weeks at $20.28 per week; and by M. A. Sjobeck, East Dedham, four weeks in all, employment being at odd times, at $15 a week.

The committee of arbitration finds upon all the evidence that the employee, Larsen, because of his injuries, which have rendered him unable to do the usual work of a painter, has been since the time of his injury, with the exception of nineteen weeks, totally incapacitated for work, and that during four of these nineteen weeks he was partially incapacitated; that his incapacity still exists; and that he is entitled to compensation at the rate of $9.02 a week during the period of his total incapacity, and at the rate of $1.52 a week during the period of his partial incapacity, compensation at the rate of $9.02 a week to continue during such time as he is totally incapacitated.

Under this finding there is due the employee at the time of this hearing twenty-two and five-sevenths weeks' compensation at the rate of $9.02 a week, and four weeks' compensation at the rate of $1.52 a week, a total of $210.96.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

FRANK J. DONAHUE.
ADDISON M. GOLDSMITH.
WALTER ISIDOR.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, April 22, 1915, at 2.30 P.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that the employee, Carl T. Larsen, received a personal injury, arising out of and in the course of his employment, on April 21, 1914, by reason of a blow from a staging hook which fell and struck him on the head, fracturing his skull. Except as stated in the report of the committee of arbitration he has been totally incapacitated for work as a result of the injury, and is entitled to compensation in accordance with said report.

The Industrial Accident Board therefore awards the employee a weekly total incapacity compensation of $9.02 for a period of twenty-two and five-sevenths weeks, and a weekly partial incapacity compensation of $1.52 for a period of four weeks, the total sum due to Feb. 27, 1915, the date of the hearing before the committee of arbitration, being $210.96.

The Board finds further that the employee continues to be totally incapacitated for work, and that the insurer should continue to pay him a weekly compensation of $9.02 pending a revision of this order, after review, under Part III., section 12.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1486.

THOMAS J. FITZGERALD, *Employee.*
CHARLES R. GOW COMPANY, *Employer.*
CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. PRE-EXISTING DISEASE. CONDITION OF ARTERIOSCLEROSIS MATERIALLY AGGRAVATED BY INJURY. COMPENSATION AWARDED.

It appears that the employee was injured by reason of a cave-in of the bank on the side of the trench in which he was working. After he was rescued from his position in the sand and dirt he was taken to the hospital, where he was found to be in a very weak state. Prior to the injury he had arteriosclerosis in a mild form, but this condition did not affect his ability to perform work. Thereafter, because of the material acceleration of the sclerotic condition, the employee was rendered unfit for employment, and at the time of the hearing his incapacity for work promised to continue for an indefinite period.

Held, that the employee was entitled to compensation.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Thomas J. Fitzgerald *v.* Contractors Mutual Liability Insurance Company, this being case No. 1486 on the files of the Industrial Accident Board, reports as follows: —

The arbitration committee, consisting of Thomas F. Boyle of the Industrial Accident Board, chairman, William A. Hogan, representing the employee, and Herbert L. Barrett, representing the insurer, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Lowell, Mass., on Friday, Jan. 22, 1915, at 10.30 A.M.

W. D. Ring appeared as counsel for the employee, and Norman F. Hesseltine appeared for the insurer.

The issue in this case was the length of time that the employee was incapacitated as a result of the injury which he received on Nov. 6, 1914. His average weekly wage at the time of the accident was $12.

The testimony was substantially as follows: —

Paul Fosser testified: —

On Nov. 6, 1914, I was employed by the Charles R. Gow Company. On this day I was driving a joint on the pipe near which Mr. Fitzgerald was working. He asked me if it would be all right to throw the dirt on the pipe. He meant to ask if I had the bottom of the joint open so that he could throw the dirt in, and I said, "Yes," and just then I saw the bank cave in, which threw him over the pipe. The trench in which we were working was 13 feet from the line. I do not know how much the line was over the ground, but I should think it would be about a foot and a half, making the trench about 11½ feet in the ground. The pipe on which we were working was laid in the center of the trench which was about 4 feet wide. This pipe was 24 inches in diameter, and was on a piece of blocking between 2 and 4 inches from the ground. On the sides of this 11½-foot ditch there was dirt, that had been taken out of the ditch, piled 4 or 5 feet high. When the bank caved in there were two or three different grades of dirt. There was a run of sand down to about 5 feet from the ground, and that came rolling from the top. I hollered to him when I saw the bank caving, and he had only time to take one step when the clay hit him. The sand first struck him in the back and then threw him over on the pipe. Mr. Clark, Mr. Burke and I carried him up the ladder and sat him on the dirt on the top of the embankment; then we took him by the arm over to the station, about 100 yards across the boulevard. When I left him at the hospital he seemed very weak. We did not use spades to dig Mr. Fitzgerald out of the cave-in. There had been braces in this hole, but they were knocked out when the pipe was put in and were not put back. The city of Lowell took charge of putting up the braces and digging the hole, and Gow was simply laying the pipe.

Edward Carney testified: —

I was working with Mr. Fitzgerald on Nov. 6, 1914, on which date he was injured. Mr. Gow told me to knock the braces out, so I did it and then I went away. When I came back I saw them carrying out Mr. Fitzgerald. I did not help to take Fitzgerald to the station, but he looked as though he was hurt very much. I then went back to work and began melting lead, and meanwhile he had gone down to the hospital in an automobile. There was dirt piled up on the side of the trench about 4 feet. I had worked with Mr. Fitzgerald, prior to the time of this accident, in the water works, and I always thought he was a good worker, and he showed no signs of being disabled. In the hole where the cave-in was there had been two braces, one on each side of the hole, which were braced against a board on the side of the hole and hammered into the ground. Then there were two or three cross braces on each side of the trench which held up the braces that ran into the earth. I knocked down the cross braces on the side of the hole, and that left the boards that were against the earth without any support except the earth in which they were hammered.

Francis T. Burke testified: —

I was in the employ of the Charles R. Gow Company on Nov. 6, 1914, when Mr. Fitzgerald was injured. Just a moment before the injury the braces had been knocked down to let the pipe down, and I went up to help Carney get the lead ready. I heard somebody hollering, and I saw Fosser and another man pulling Fitzgerald out of the hole. I helped them to get him up the ladder. The two men helped him over to the station, and he went down in an automobile to the hospital. I should say the ditch was about 11 or 12 feet deep, that is, from the top of the embankment. Then there was dirt that came out of the hole, piled up on the side of the embankment. I knew Mr. Fitzgerald about three months before the time of the accident. I worked with him before in the water works. The two braces that the first two witnesses spoke about being driven into the ground were just laying up against the embankment, and were not driven at all. I put the very braces in that were knocked out. Sometimes we remove them and put them back again. The cave-in happened where the braces were knocked out.

James Rogers, M.D., testified: —

I was called down from my room at the hospital on Nov. 6, 1914, to see Mr. Fitzgerald, who was in the ward. The man was sitting on a couch which we have for the purpose of out-patients. This couch has a screen around it. He laid down and I asked him what was the trouble, and he told me that some dirt had fallen on him. He complained to me of general soreness from the waist down. He had contusions on his legs and complained of the muscles of his back. I went over him and I found he had simply some scratches and abrasions. His complaint was of his back mostly. I told him that he had better stay overnight at the hospital so that we would have a better chance to observe him, but he said he would not do that. I put on his back a wide strap of plaster from one side to the other. I rubbed him with chloroform liniment and then put on the strapping, and that is the end of those cases as far as we are concerned, because he would not stay at the hospital. After he was dressed I left him and went upstairs and did not see him again. As I remember it, he complained of pain in his back in the lumbar region. If he had stayed in the hospital we would have had a thorough examination. I have been house doctor at the hospital since June, at which time I graduated from Boston University. Before finishing my course at college I was assistant to the medical examiner of Suffolk County for three years, and I have examined thousands of urines. If the man comes and stays overnight the urine is always examined. In the Lowell General Hospital we have a big record sheet for regular patients, but if a patient comes in and does not stay we simply make out a card, which was done in this case. From this card I find that Mr. Fitzgerald came in on November 6, but I cannot make out the hour.

Mrs. Katherine Fitzgerald testified: —

I was in my hall when I saw the automobile coming up, and I saw the two men lift my husband up and bring him into the house, and I asked the men what was the matter and they said there was a little cave-in, but they guessed he would be all right. They left him just inside the door, so I took his arm and helped him along, and I asked him what happened to him. He could not tell me; all he said was that he wanted to go to bed. I undressed him and he went to bed. He complained of pain in his back, and about 7 o'clock he asked me if I would not call in a doctor. I called in Dr. Stephen J. Johnson, my family physician, but he did not get to the house until about quarter of 10. He gave him some stuff to ease him, but he did not sleep all night. He lay in bed for either seven or eight days, and the doctor came in every morning and evening for about two weeks. He complained of pain in the back of his neck and extending down his back. Three or four days after he was hurt I noticed he was passing blood with his water, but I did not tell him about this for a few days. The first day I noticed it, it was kind of dark. He continued passing blood for two or three weeks. Dr. Johnson came to my house on November 6 in the evening for the first time. Then he came the next morning and he told me to keep on with the medicine he had given me the night before. Dr. Johnson treated my husband for about seven weeks, coming twice a day for two weeks. He asked my husband when he came how he felt, and he examined him, that is, he felt of his back and legs. I was not present at all the examinations because I had something else to do. At the end of the first two weeks he did not treat him so much because he thought he was getting better. He thought then he would be able to get along in five or six weeks. He came once a day after the first two weeks for seven weeks, then he told him he could walk out awhile, so on the 23d of December he went out for the first time. Since December 23 he has gone out quite a few times. The doctor used to rub my husband's back, and he gave him different kinds of pills. I think these pills were for his bowels because he had a lot of trouble with them. I did not keep the diet list which Dr. Johnson gave me because I did not think there was any need of it. I could not tell whether it was a written or printed list, but it was taken out of a book. I did not use the list because I knew my husband did not like the kind of stuff that he was forbidden to eat. The doctor used to ask me sometimes what my husband had to eat. He told me not to give him red meats or starchy foods. My husband did not care about eating, but wanted to be drinking water all the time. Since the injury he has not been able to do anything. At the present time he is not able to work. I never knew him to be sick before the accident. He always worked when he had work. I am the mother of eight children, and my husband's wage was the only support I had with the exception of what my two oldest children earned. I never had a doctor for my husband before he was hurt. Dr. Smith examined my husband for the

John Hancock Insurance Company three or four years ago, and Dr. Boyle examined him for the Mutual Life two or three years ago. My husband did not carry any accident insurance.

Stephen J. Johnson, M.D., testified: —

On Friday evening, Nov. 6, 1914, I was called to Mr. Fitzgerald's house. I found him in extreme pain and in a very nervous condition. I asked him what was the matter, and he said he got hurt and was taken to the hospital where he was bandaged, and was then brought home in an automobile by Mr. Gow. He said that about 6 or 7 o'clock he had so much pain he called me. He was hurt about 2 and returned home about 4. I prescribed some medicine that eased him up some and then I examined him. His left leg below the knee was bandaged, and the small of his back was strapped with what we call rubber plaster. I wanted to remove this, but it was pretty late so I simply left him some tablets. The next day I arrived there between half past 8 and quarter of 9. I found him rather easy, but he said he did not sleep well. He complained of pain in his left side, back, loins and a portion of the abdomen. I took off the bandages and I found there was a small abrasion below the knee that did not amount to much. I took the plaster off the back and found nothing there, so I put some fresh plaster back again. I went over again in the evening, on my way to supper, and Mr. Fitzgerald said that there was something the matter with his water. He showed me a vessel quite full, and I saw that there was blood in it. He said he had been making quite a lot of water twice a day. I asked him when he noticed the blood and he said that morning; that would be about twelve hours after the accident. The bloody urine continued until a week from the following Friday, about twelve days after the accident. It cleared up some and meanwhile I was treating him. I treated him for the urine and I also gave him some tablets for constipation. The third day he complained a great deal of pain in his back, and he was in a very nervous condition. I said, "You are suffering from the shock of the injury." He complained some of stiffness in his neck and stiffness of his right side. I thought that was from being tossed around, and I applied some preparation of iodine to it and rubbed him morning and evening. I saw him all that week every morning and evening, and when the water got sufficiently clear to examine it, I found a slight taint of albumen in it, but I found no sugar. I had two specialists also examine the water. He made large quantities of water, and he had an inordinate thirst for water. I told him to drink all the water he could, which he did, and his water cleared up very nicely. I made no chemical or microscopic examination of it when I found the blood, but waited until it cleared up. I think for a week or ten days I made two visits a day. I used to give him sedations at night when he complained of pain. Once or twice I had to give him an injection with soap and water to relieve the

bowels. In this case I had to act as a nurse as well as a physician, because the people could not afford to pay for one. The leg seemed to get well, but his back bothered him considerably. I think I saw Mr. Fitzgerald every single day in December up to the 22d or 23d, at which time I told him to try to get outdoors. He went out, but he seemed to crawl around more than anything else. He has been to my office probably eight or ten times. The leg seemed to get well, but his back bothered him considerably. I thought the trouble he was suffering from was a traumatic condition, the contusions affecting the kidneys so that there was a rupture in the blood vessels of the kidneys that made him pass blood in his water. I thought he was suffering from diabetes insipidus, due to trauma. For the first two or three days after the injury he had a temperature of 101$\frac{3}{5}$. I agree that other things show up with his disability from the injury, such as the condition of his artery system. When I found his pulse up to 104 I suspected some trouble with the arteries. I did not take his blood pressure at any time. His pulse this morning is 126. The blood that I discovered in the urine was of a dark reddish color. I knew it came from the kidneys because it was mixed well with the water. I watched the water which he made to see whether the blood came after the urine had passed, but I noticed that it came mixed. There were no blood clots. I feel that the diabetes insipidus from which Mr. Fitzgerald was suffering was caused by trauma, although it can be caused by other things. When I suspected this trouble I regulated his diet as much as I could. I told him that he must abstain from red meats and also from starchy foods. I gave Mrs. Fitzgerald a printed diet list, which I tore out of a small book containing these, but afterwards told her not to bother with it but to give him what I told her to. Diabetes insipidus is something that may last for years and years. An authority on this is a book entitled "Urinary Analysis," written by F. A. Davis and published by J. A. Purdy. Three weeks after Mr. Fitzgerald received his accident he asked me if I would give him a certificate to the insurance company so that he could get some money, so I wrote to them on a prescription blank stating that the man was suffering from his injury and that he would probably be incapacitated on account of same for some time, but that he might be able to do something in five or six weeks. I wrote one of these every week for two or three weeks. In my opinion Mr. Fitzgerald is not able to go to work and will not be able for three or four months. I do not think he will ever be all right, but I am prepared to say that the injury is the entire cause of his disability. I never treated Mr. Fitzgerald for any sickness until he was injured. I believe about fifteen years ago he had an injury to his eye, but I did not treat him at that time. I never saw Mr. Fitzgerald take a drink, and I know that for the last eleven weeks he has not taken a drop. I have not minuted the results of my examination, but simply depend upon the tablets of memory. I enter my charges in a day book which I have, usually at the end of each day or the next morning. I have a day book and ledger combined in which I enter my visits. I usually make note of a visit on my prescription blanks

before I leave the house, and when I get home enter same in my day book. I do not keep any record of my prescriptions to my patients. When I made a visit to Mr. Fitzgerald I entered it in my day book. My bill for the first two weeks' attendance is $35.

Thomas B. Smith, M.D., testified: —

I examined Mr. Fitzgerald this morning as the impartial physician. He gave me his age as forty-five, but I should think his age was about fifty. His weight at the present time is 141 pounds. He said that before the accident it was over 150. He impressed me as a feeble man, moving slowly, with signs of muscular stiffness and pain. On examining him I found that he had a pulse of 124, of high tension, with hard arteries, a condition of arteriosclerosis which is probably general. He denies all venereal disease, but admits that he habitually used a pint of porter a day for many years. The examination shows a stiffness on movement in the lower back. Pain on pressure was greater on the left side than on the right. No external signs of violence now. A scar shows on the upper left groin which he says is a scar of an injury in boyhood days. That is the only mark found on his body. About as thorough as possible, I made an examination of the urine. The man, in our presence, passed urine for the first time in one and a half hours, 120 cubic centimeters. The normal quantity in twenty-four hours is 1,500 cubic centimeters. Assuming that he would pass the same amount during each hour and a half for twenty-four hours, the amount would be less than normal, and this would indicate that there is not poly-urine at present. The color of the urine is light, and there is an exceedingly faint trace of albumen, and no sugar. There are two kinds of diabetes, — diabetes mellitus and diabetes insipidus. Diabetes mellitus shows sugar on examination, but diabetes insipidus shows none. Diabetes insipidus shows itself by the excessive quantity of water passed. The accident would be responsible, in part, for the condition in which the man is at present. The man was developing arteriosclerosis before the accident; he had an alcohol habit and worked hard and continuously with very little loss of time, and under these conditions an accident would be quite a shock to him. He is a man that is somewhat debilitant and does not stand an accident well. The accident aggravated the condition of his arteries, and at present he is in a feeble condition, evidently unfit for any work that requires strength. He walked down the hall to-day like a stiff old man, and every movement is stiff and causes pain. I did not take his blood pressure to-day because I did not have the necessary instrument. A man of forty-five years of age should have a blood pressure between 140 and 160. His blood pressure is somewhat high from my observation of the palpitation. Almost every man shows arteriosclerosis after he passes the age of 50, but a man who uses alcohol brings that condition on earlier. The condition of the arteries before the accident might have continued for some time, and he might have been able to work for some years,

if it had not been for this accident. The condition of arteriosclerosis from which the man is suffering now has been aggravated by the accident, but it would progressively get worse and would appear eventually if no accident had been received. When the dirt fell on this man he was evidently under compression, and it is possible that the internal organs were badly compressed, and it might have brought on a disturbance of his kidney and so caused the aggravation of the blood vessels. This man has chronic arterial trouble which will grow worse with his age. He would be liable to have a stroke of apoplexy or a cerebral hemorrhage if he attempted to work in the condition in which he is at present. He would not be considered a safe man to do any heavy work. I could not say how far the arteriosclerosis was advanced at the time of the accident, as it comes by fits and starts. Some people having arteriosclerosis remain in a stationary condition for a long while, and an accident of this sort would cause it to be active, very likely. This man is a sick man to-day.

Fitzroy Pillsbury, M.D., testified: —

I examined Mr. Fitzgerald on December 13 for the insurance company. I tried to examine him a week previous to that, but he told me that I would have to see Dr. Johnson before he would submit to an examination. I tried to get Dr. Johnson on the phone, but was not able to, so I reported that I had not made an examination of him. On December 13 I found no objective symptoms. There was nothing that could be seen. He was weak and feeble and I noticed a distinct tremor. His pulse was 100; he had a high blood pressure and hardened arteries. I examined his head, but nothing showed there. He complained of tenderness in the region of the thorax and of lameness around both shoulder blades and down one of his arms. The abdomen was tender, about the same on each side, although he said that the pain was mostly in his left side running up along the left shoulder. He complained of a burning sensation and a severe pain that ran directly through the level of the bladder when he passed urine, but you would not expect that pain would radiate exactly in that particular part of the body. At the time of my examination I could not find anything in his condition that was the result of a cave-in such as was described. I was present at the impartial examination to-day, and I agree with Dr. Smith. I think that the condition that was already present was aggravated by the accident, but I think that the same condition might have appeared without the accident. His condition of to-day might arise entirely without the accident. His inability to do work to-day is due to his general weakness caused by the condition of his arterial system. It is possible that the man's present condition is due to the accident. At any rate, it perhaps hurried it along. There is no question but what a man suffering from arteriosclerosis, who received an accident, would suffer more than a perfectly healthy man receiving the same accident. If he had not received this injury, chances are that he might go along for some time. Collapses sometimes

come instantly in a case of this kind, and the condition he is in at present might be entirely apart from any accident, but I think the accident had more or less effect on his condition to-day.

The committee of arbitration finds upon all the evidence that the employee, Thomas J. Fitzgerald, is totally incapacitated for work as a result of the injury, and that the period of said total incapacity for work is not now determinable. The employee is, therefore, entitled to the payment of medical services during the first two weeks, in amount $35, and to the payment of a weekly compensation of $8, two-thirds of his average weekly wage, from Nov. 20, 1914, the fifteenth day after the injury, said compensation to be paid during the continuance of his total incapacity for work, in accordance with the Workmen's Compensation Act.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

THOMAS F. BOYLE.
WILLIAM A. HOGAN.

Herbert L. Barrett dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, March 4, 1915, at 11.30 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that the employee, Thomas J. Fitzgerald, received a personal injury by reason of a cave-in of the bank on the side of the trench in which he was working. The em-

ployee was working in the center of the trench, which was 4 feet wide, and about 11½ feet beneath the surface of the street at the time of the injury, which occurred on Nov. 6, 1914. There was a run of sand down to about 5 feet from the surface, and this sand struck the employee in the back, throwing him over the piping upon which he was working. After he was rescued from his position in the sand and dirt he was taken to the hospital, where he appeared to be in a very weak state. Prior to the injury the employee had arteriosclerosis in a mild form, but this condition did not affect his ability to perform the work at which he was employed at the time said injury occurred. By reason of the occurrence of the injury, and as a result thereof, this condition of arteriosclerosis was materially aggravated and accelerated, and the employee is now in a feeble condition and unfit for the performance of any work which requires any strength. The medical evidence shows that the condition of the arteries before the injury might have continued materially unchanged for some time, and that the employee probably would have been able to work for some years, if it had not been for the accident. The average weekly wages of the employee before the injury were $12.

The attending physician, Stephen J. Johnson, M.D., rendered a bill for $35 for services to the employee during the first two weeks after the injury. This was a reasonable fee for the payment of the services furnished by the physician.

The Industrial Accident Board finds upon all the evidence that the employee, Thomas J. Fitzgerald, is totally incapacitated for work by reason of a personal injury arising out of and in the course of his employment, said total incapacity continuing; that the condition of arterial sclerosis existing at the time said personal injury was received was materially aggravated and accelerated thereby; that there is due the said employee the payment of $35 as a reasonable fee for the services rendered by his attending physician, Stephen J. Johnson, M.D., during the first two weeks after the injury; that the insurer should pay a weekly compensation of $8 dating from Nov. 20, 1914, the fifteenth day after the injury, to Jan. 22, 1915, inclusive, a period of nine and one-sevenths weeks, a total of $73.14, making the total sum due to said date $108.14; and

that the insurer should continue to pay the said employee a weekly payment of $8 during the continuance of the total incapacity for work of the employee, until this order is modified after due hearing, as provided by Part III., section 12, of the act.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE NO. 1492.

AMERETT PENNIMAN, WIDOW OF HENRY A. PENNIMAN, *Employee.*
BOSTON ELEVATED RAILWAY COMPANY, *Employer.*
MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DEATH RESULTS FROM THE INJURY. DEPENDENCY. SCOPE OF EMPLOYMENT. EMPLOYEE TAKES HIMSELF OUTSIDE THE SPHERE OF HIS EMPLOYMENT BY REASON OF UNAUTHORIZED ABSENCE ON PLEASURE RIDE. JUMPS OFF CAR WHILE IN MOTION AND WAS STRUCK BY CAR HE INTENDED TO BOARD. DEATH FOLLOWS. COMPENSATION NOT AWARDED.

The employee was engaged at a temporary crossover to direct cars and warn automobiles and other vehicles of the existence of danger, and his duties required him to be on hand from 6 P.M. to 6 A.M. At about 11 P.M. on the night of the fatality he left his station and "jumped" a car headed for Kendall Square, riding around the loop and continuing to a point where an inbound car would take him back to his place of duty. At this point the employee jumped off one car, which was in motion, for the purpose of taking the inbound car. In so doing he was struck by the car which he wished to board, and received the injury which killed him.

Held, that the injury and death did not arise out of the employment.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Amerett Penniman,

widow of Henry A. Penniman *v.* Massachusetts Employees Insurance Association, this being case No. 1492 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Thomas F. Boyle of the Industrial Accident Board, chairman, Albert C. Day of Saugus, Mass., representing the widow, and William J. Green of Cambridge, Mass., representing the insurer, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, New Albion Building, Boston, Mass., on Tuesday, March 30, 1915, at 10.30 A.M.

Lester W. Ingram and John M. Cronin appeared for the widow and insurer, respectively, as counsel.

Both parties waived their right to have the hearing held in Cambridge, Mass., where the accident occurred, and agreed to have it held in Boston, Mass.

It is agreed that Henry A. Penniman was an employee of the Boston Elevated Railway Company, and on the night of Sept. 9, 1913, he was struck by a car and received an injury from which he died a short time after; that Amerett Penniman is the widow of Henry A. Penniman, and was living with him at the time of his death, and is, therefore, presumed to be totally dependent; and that his average weekly wages were $18.47.

The only question in the case was whether the injury arose out of and in the course of his employment.

The material evidence was substantially as follows: —

Eugene Joseph Shanley of Newton testified: —

I am a conductor for the Boston Elevated Railway Company, and on the night of the accident I was working on the car running from Harvard Square to Kendall Square and back to Harvard Square. On this night, going to Kendall Square, leaving Harvard Square about 10.32, I reached Columbia Street about eighteen minutes of 11, and Mr. Penniman was standing there and jumped on the rear end of my car and said, "I guess I will take a ride around with you;" so he rode all the way down on the rear end of the car to Kendall Square, back up Broadway to Columbia Street, and said he might as well ride up and meet the other car coming down. He was watching for the other car to come down, and as the car was coming to Fayette Street he saw the car and I gave the bell for the motorman to stop. He got off and said, "All right." I looked back and thought he was trying to get on the left side of the car, when the door must have hit him and thrown him over; so I gave the motorman three bells, the emergency signal, and got off the car before it stopped. Mr.

Penniman was lying in the street about 7 or 8 feet from the tracks. I lifted him up and other men came and we brought him to the drug store, where we telephoned for the ambulance. Both cars were the ordinary box cars. Mr. Penniman and I had our runs together; he was my motorman for about four or five weeks. That night I had run four trips before he boarded my car. This was the first night I had seen him on this job. He was riding with me that night about fourteen minutes. Mr. Penniman was working on a temporary crossover on Broadway, about 20 feet from Columbia Street, towards Harvard Square. The duties of a man on a crossover are to look out for teams, automobiles and people crossing there because there is a rise on the track. We did not meet any car going down or coming back. He would get back to meet the car coming down, that is, the regular passenger car. They run every fifteen minutes. Of course service cars are likely to come along. He stayed on the rear of the car and did not go up front.

Fred Trohan, 1996 Massachusetts Avenue, Cambridge, an employee of the road department of the Boston Elevated Railway Company, testified: —

I had the putting in of this crossover. It was on Broadway, about 30 or 35 feet from the first edge of Columbia Street, nearest to Cambridge. It was a left-hand crossover. The crossover is about 3 inches above the other tracks. This crossover was put in for repairing and resurfacing the tracks on the in-town track. The crossover was not being used this night. I had put it in that afternoon to be used the next morning. A watchman is stationed, even if not in use, because two cars are not allowed to pass at the same time, and to watch the boys. The tongue is liable to fly out and the cars jump over to each other if they passed a crossover at the same time. I was not there at the time of the accident.

John W. Hodge, 20 Langdon Street, Cambridge, chief inspector of the Boston Elevated Railway Company, testified: —

I had supervision over Mr. Penniman through inspectors. I was not notified of this accident until I came to work the next day. We put "blue uniform" men on all crossovers to divert cars and to see that they do not pass each other at a given point. There are no permanent left-hand crossovers. A man is there to watch out to see that the cars go over right and to watch out for the fire department, automobiles and teams of any kind. He has a lantern at night and a flag in the daytime. Besides the passenger cars every fifteen minutes on this street, the coal cars run to Harvard power station and travel altogether on this street, and if there is a fire or breakdown on Main Street all the Main Street cars would be diverted to Broadway. This man is there for emergencies. Whether in the night or day, when the road department starts to excavate for a crossover they

notify us, and before it is half in we put a man at the left-hand crossover to warn. Besides the man we put there, there is a working man from the road department. He has charge of the lanterns and is entirely different from our department. Our "blue uniform" man has a lantern of his own, and waves it if he sees anything approaching. A man is not allowed to go on the sidewalk; he is supposed to stay right out in the middle of the street where that crossover is. He may sit on a box. The inspectors are looking out for cases of this kind, and if a man is on the sidewalk he is told to go out and stay where he belongs. This is not a printed rule, but we instruct the men. This man, Mr. Penniman, had done a great deal of this work. [A copy of the printed rules regarding the placing of blue uniform men as watchmen was offered in evidence.] This rule has to do with anything that interferes with traffic. Mr. Penniman had done this kind of work for several years. He worked at it in the summer of 1912 for two or three months. He was sick every summer. He loafed quite a lot in the summer of 1913, and came to me and said he could not afford to loaf but was not able to run his car. I told him if anything turned up I would send for him, so I sent a messenger to his house and told him about this work. He had experience on this kind of work.

Thomas King, 44 Champney Street, Brighton, employed as an inspector of the Boston Elevated Railway Company, testified:—

I am an inspector for the Boston Elevated. It was a part of my duty to inspect the district in which Mr. Penniman was working that night. I rode by and saw him talking with a man at the left-hand crossover, but I did not have any talk with him, and seeing everything was all right I went along. I went by there to see that the man was on the job. He is supposed to stay out at the crossover to watch that cars go over it all right, and to warn off automobiles, the fire department and teams. He has no right to go away from his station for the purpose of riding. When I came by there, if there had been no one there I would have notified the office. His work did not require him to leave his place at all. If a man is not well and wants to leave the job, he tells the inspector to get a man, and the inspector will wait himself. Somebody must be there all the time. From where he was working to Kendall Square is 4,900 feet. From where he was working to where he was killed is 2,150 feet. The run from Harvard Square to Kendall Square is twenty-five minutes. Mr. Penniman did not complain to me about being sick.

John Riley, 23 Harvard Street, Cambridge, a watchman for the Boston Elevated Railway Company in the road department at the time of the accident, testified: —

My work was to care for the street from a point down below Windsor Street to a point above Columbia Street. All along the line where there were obstructions I put lanterns. I saw Mr. Penniman that night, but was

not talking to him. I heard him talking loud enough to know what he was saying. It was about half past 10. He was talking with another man. He made the remark that he was going to take a ride, as there was a man coming down whom he knew. He got on the car, and when it came back it did not stop, and that is the last I heard of him until I saw him later on. I was within hailing distance of him in case of emergency.

Richard Griffin, 19 Cushing Street, Cambridge, an inspector for the Boston Elevated Railway Company, testified: —

On the night Mr. Penniman died I walked over to his station and arrived there about 11.07 P.M. I saw Mr. Riley, and he was probably 50 feet from the crossover. I did not see any man at the crossover, so I went to Riley and asked him if there was a uniform man there, and he told me there was but he had taken a ride. So I stayed at the crossover until a car came along from Kendall Square, and I got on the car. I asked the motorman if he saw the watchman at the crossover, and he said he was in the hospital, and that he had hit him with his car when he was going down. He said I had better take the handles and drive the car, so I drove it to the car barn and notified them at the office, and they sent another man right down to the crossover. It is not proper for a man to leave the crossover and go off on cars. If they are using a crossover and there is a point where they cannot see one another, there are three men on the job and one of the men rides the cars back and forth. This is where there is a long turnout. This particular crossover was not in use at the time, and there were not three men stationed there. I went down there to see if this man was doing his duty properly. My duty is to go around to these crossovers once or twice a night. Mr. Penniman's hours were from 6 P.M. to 6 A.M. on this job. If a man wants to leave his job he usually tells the motorman to send an inspector as soon as possible, and the motorman will see the inspector and he will go down to that place. The watchman was not supposed to be on the car. He would eat his supper on the street, sitting on a box.

Christopher R. Proudfoot, 1605 Cambridge Street, Cambridge, an employee of the Boston Elevated Railway Company, testified: —

I am a clerk for the road department at Division 7. I do not know anything about the accident, but know about the general conditions of the track work and where it was laid out. We notified the transportation department that we required a man. If they had not sent a man we would have put one there to watch.

Matthew Joseph Landers, motorman for the Boston Elevated Railway Company, testified: —

I was working on the car with Shanley. I did not have any talk with Penniman. He was standing at the crossover when I went down. We did not pass any other cars going down or up.

Patrick J. Hogan, motorman for the Boston Elevated Railway Company, testified: —

I was the motorman on the car which struck Mr. Penniman. I heard something hit on the left side of the car, and thought somebody threw something, so I opened the door and saw the bulk way back. We were going about 7 miles an hour. I did not see the man before I hit him. Both doors of the car were closed at the time. It was an old style box car. It was not exactly at the stop; it was about three cars from the stop. Both cars were going at the time.

The evidence shows that Henry A. Penniman, a "blue uniform" employee of the Boston Elevated Railway Company, was stationed at a crossover on the Boston Elevated tracks on Broadway, near Columbia Street, Cambridge, on Sept. 9, 1913, to watch a temporary crossover, and he had a duty there to direct cars that come along, and to warn automobiles, teams and vehicles of all kinds away from it. His hours on this particular job were from 6 P.M. to 6 A.M., and it was necessary for him to be on the job all the time. About 10.45 P.M. he left his work and jumped a car and rode to Kendall Square, around the loop and back, continuing over the crossover about a distance of 2,150 feet. An inbound car was coming along, so he jumped off while the car was in motion, intending to board the inbound car to bring him back to his work, and he was struck by the car he intended to board. The evidence further shows that this man left his work without authority, and that the ride he was taking was for pleasure and had nothing whatever to do with his employment; that when he left his work it was at his own risk. His employment for that night was specifically on the work of guarding the crossover, warning automobiles, teams and other vehicles and watching the cars going over the crossover. There was no evidence to show that he was ordered by any one to make this trip on the car.

The committee of arbitration finds upon all the evidence that the fatal injury which Henry A. Penniman received on Sept. 9, 1913, did not arise out of and in the course of his

employment, and that his widow, Amerett Penniman, therefore is not entitled to compensation under the Workmen's Compensation Act.

THOMAS F. BOYLE.
WILLIAM J. GREEN.
ALBERT C. DAY.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, May 20, 1915, at 10 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows and the Board finds that the employee, Henry A. Penniman, received the injury which caused his death at a time when he had taken himself out of the scope of his employment by reason of his unauthorized absence from work on a pleasure ride, and that said injury did not arise out of and in the scope of his employment. Therefore the claimant, Amerett Penniman, widow and dependent of the deceased employee, is not entitled to compensation.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1494.

HARRY OTTO, *Employee.*
GILCHRIST COMPANY, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

ARISING OUT OF THE EMPLOYMENT. NO EVIDENCE FROM WHICH INFERENCE REASONABLY MAY BE DRAWN THAT EMPLOYEE SUFFERED INJURY IN THE COURSE OF AND ARISING OUT OF EMPLOYMENT.

The employee claimed that he strained himself while lifting a packing case off the elevator. He "felt something give way inside of him." He told nobody at the store about it until next day, when he called up and reported injury. Went back to work in three weeks, but was discharged for misconduct within a few days. Told "welfare man" at store he did not know whether he strained himself at store or outside.

Held, that he did not receive an injury in the course of and arising out of his employment.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Harry Otto *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1494 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, Frank H. Chambers, 48 Old Heath Street, Roxbury, Mass., representing the employee, and David J. Maloney, 34 School Street, Boston, Mass., representing the insurer, heard the parties and their witnesses in the Hearing Room of the Industrial Accident Board, Monday, Feb. 8, 1915, at 10 A.M.

John M. Morrison of Sawyer, Hardy, Stone & Morrison appeared as counsel for the insurer. The employee appeared unrepresented.

The only evidence offered to support the contention of the employee that he suffered an injury arising out of and in the course of his employment was that of Otto himself, who testified that on July 24, 1914, while lifting a packing case from the

elevator on the tenth floor of the Gilchrist building he felt something give away inside of him. He did not speak to anybody at the store concerning the injury, and did not feel any pain until that night, when he called in a physician, who told him that he had strained himself in lifting the case. The physician attended him daily for several days, and he is still under treatment.

The day following the alleged injury he called up Mr. Frank S. Leavitt, who is in charge of the elevators of the Gilchrist Company, and told him that he had strained his stomach lifting a heavy case, and was confined to his bed. He remained away from work three weeks, and when he returned was put to work on one of the passenger elevators, but was discharged within a few days. For the last three months he has been employed as an attendant at the Boston State Hospital. His claim for compensation was filed with the Industrial Accident Board on Dec. 23, 1914.

Frank S. Leavitt, house master for the Gilchrist Company, testified that he talked over the telephone with Otto on the Tuesday following the alleged injury, and was told that Otto had some trouble with his stomach, and suffered severe pain in his left side. Otto said nothing to him at the time about having hurt himself lifting boxes, and he had heard nothing about this claim until now. When Otto came back to work on Augsut 13 he informed Leavitt that he did not know just how the strain was caused. He was discharged on August 21 for misconduct.

Robert H. Heartz, welfare man for the Gilchrist Company, and in charge of all accidents and claims, also president of the Mutual Benefit Association which paid compensation of $15 to Otto while he was out, testified that he saw the latter on Monday, August 17, in regard to his having been out. Otto informed him that the doctor had said he strained his stomach. He had taken particular pains to find out whether the strain had been the result of anything which had happened to Otto in the store, because it was part of his duty to report accident cases; but Otto said he did not know whether he had strained himself in the store or not. Mr. Heartz had never heard of the box incident until now.

The committee of arbitration finds that there is no evidence from which it can reasonably draw the inference that Otto was injured while in the employ of the Gilchrist Company, and therefore that he did not suffer an injury arising out of and in the course of his employment, and is not entitled to compensation.

FRANK J. DONAHUE.
FRANK H. CHAMBERS.
DAVID J. MALONEY.

CASE No. 1495.

FRANK SIMONISKI, *Employee.*
H. B. SMITH COMPANY, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*
MILES D. CHISHOLM, *Physician.*

MEDICAL SERVICES. REASONABLE FEE. OPERATION FOR RADICAL CURE OF HERNIA.

The question before the committee was whether or not the fee of the attending physician, in the sum of $100, was a reasonable charge for the performance of an operation for the radical cure of hernia under the Workmen's Compensation Act.

Held, that $50 was a reasonable fee for the operating surgeon, $10 for his assistant and $5 for the etheriser.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Miles D. Chisholm, M.D., *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1495 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Dr. George H. Janes, representing the physician, and Thomas H. Kirkland, representing the insurer, being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, 423 Main Street, Springfield, Mass., Tuesday, Feb. 9, 1915, at 11.30 A.M.

Thomas C. Maher appeared as counsel for the insurer, and F. A. Ballou appeared for the physician.

The question at issue is the reasonableness of the physician's fee for a hernia operation. It appeared in evidence, on testimony of Dr. Miles D. Chisholm, that he had been an active surgeon for ten years, and had been practicing as a physician for fifteen years. He operated upon Simoniski, the patient being referred to him by Dr. Joseph Maroney. He found a large strangulated scrotal hernia. The man was in great pain, nearly collapsed, and the outcome was doubtful. Dr. Maroney and Dr. Schoonmaker assisted. On incising it he found 4 feet of a small intestine down and strangulated. He left the bowels out, wrapped in hot towels, but circulation returning, he decided not to resect the bowel and returned it to the abdomen. He performed a radical operation for cure of hernia. After operating it was discovered that the man had burns on his back, legs and arms, which were not discovered before because of his pain. He got a perfect recovery from the operation. His charge was $100, which he considered reasonable. It was the prevailing rate in Westfield, and he always makes a minimum charge to the workingman, and it makes no difference to him if the man is insured.

Dr. A. J. Douglas, surgeon for the past ten years at Westfield, thought $100 was a reasonable charge. He is connected with the hospital in Westfield.

Dr. Joseph Maroney, a physician for six years, called at Simoniski's home, sent him to the hospital and asked Dr. Chisholm to perform the operation. He assisted at the operation and thought that fee reasonable.

Dr. A. T. Schoonmaker, practicing physician for twenty years, administered the anesthetic. He described the operation and nature of the trouble. Considered $100 a reasonable fee.

The evidence was submitted to Dr. Francis D. Donoghue, medical adviser of the Industrial Accident Board, who stated that the medical advisory board of the Industrial Accident Board, consisting of Drs. F. J. Cotton, W. H. Ruddick, S. H. Calderwood, S. E. Fletcher of Chicopee, Frank Allard, Francis W. Anthony of Haverhill, and F. D. Donoghue, advised that $50 for a hernia operation was the reasonable fee in cases of industrial accidents,

with a fee of $10 for the assistant and $5 for administering ether.

We therefore find that he is entitled to recover $50 for the operation, $10 for an assistant and $5 for the adminstering of ether.

DUDLEY M. HOLMAN.
THOMAS H. KIRKLAND.

George H. Janes, M.D., dissents.

CASE No. 1497.

GEORGE W. WILDS, *Employee.*
DIAMOND SHOE COMPANY, *Employer.*
MASSACHUSETTS BONDING AND INSURANCE COMPANY, *Insurer.*

GEORGE W. WILDS, *Employee.*
T. D. BARRY COMPANY, *Employer.*
UNITED STATES FIDELITY AND GUARANTY COMPANY, *Insurer.*

JOINT TORT FEASORS. TOTAL INCAPACITY FOR WORK. INJURY RECEIVED IN ONE EMPLOYMENT. INCAPACITY BEGAN WHILE WORKING FOR SECOND EMPLOYER. RESULT OF CONTINUING TRAUMATISMS. BOTH INSURERS LIABLE.

Employee quit first employment on third day he was employed because of swollen and blistered condition of hands due to pulling lasts. Three days later, before his hands were better, entered second employment. He had been working there a week when he pricked forefinger with shoe tack. He had pain in hand before this, and there was swelling at base of finger. Sepsis developed. Medical opinion differed as to which occupational happening was responsible for condition.

Held, that it is impossible to fairly divide the result of the traumas, and that each occupational happening was a proximate cause of the injury which incapacitated the employee, in the sense that incapacity was due to the combined effects of the two happenings and not to one alone; and that insurers are jointly and severally liable and should contribute equally to compensation due.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of George W. Wilds *v.* Massachusetts Bonding and Insurance Company, and that of

George W. Wilds *v.* United States Fidelity and Guaranty Company, this being case No. 1497 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration in the first-named claim, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, John P. Meade, representing the employee, and William J. Cronin, representing the insurer, by agreement sitting jointly with the committee of arbitration in the second claim, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, John P. Meade, representing the employee, and James O. Porter, representing the insurer, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Brockton, Friday, Feb. 5, 1915, at 10.30 A.M.

James G. Harnedy appeared as counsel for the Massachusetts Bonding and Insurance Company, and D. R. Pennell appeared as counsel for the United States Fidelity and Guaranty Company. The employee was not represented by counsel.

It was agreed that the employee was totally incapacitated from an injury received in the course of and arising out of his employment. The only question was whether such injury was received in his employment by the Diamond Shoe Company, of which the Massachusetts Bonding and Insurance Company was the insurer, or in his employment by the T. D. Barry Company, of which the United States Fidelity and Guaranty Company was the insurer.

The evidence submitted was substantially as follows: —

George W. Wilds, the employee, testified that he went to work for the Diamond Shoe Company on Nov. 24, 1914, and quit on the morning of the 27th. During the three weeks previous he had been unemployed. He worked as a last puller. The shoes here were the hardest he had ever pulled in his life. His hands were in good condition when he went to work, but by noon of the first day blisters had started. His hands became swollen, some of the blisters began to bleed and he was obliged to quit on the third day. On Nov. 30 he went to work for the T. D. Barry Company. The work was of the same kind as that at the Diamond Shoe Company, but the pulling was easier here. His hands had not become much

better when he entered the T. D. Barry Company's employ. They were still blistered, but not swollen much. They ached off and on from the time he started in here, but the blisters were getting better every day. On Monday, December 7, a week from the Monday he started to work here, while picking up a shoe he pricked his forefinger with a little short shoe tack; sucked it out and squeezed it, and did not think much of it. He had had pain in this hand for four or five days before the tack prick, and the forefinger had commenced to swell at the base, where it was afterwards lanced. He quit work on December 10. A laster ordinarily earned from $13 to $16 a week. At T. D. Barry Company's they were just "starting a run," and he got through at 2 o'clock each day. He went to work between 7.30 and 8, and pulled twenty-five cases at 6 cents a case up to the time he got through each day.

Dr. N. C. King testified that Wilds came to see him on December 8. The base of the index finger was tender. The tenderness did not extend to palm or beyond the first digit. There was an old excoriation at the base and two or three similar excoriations on the hand. On December 10 he incised the palmar surface of finger between the base and first joint. He found considerable pus which he believed he would have found if he had lanced it on the night of the first visit. On December 16 he sent Wilds to the Brockton Hospital. His theory was that the finger had become infected from ulcered surface. A pin prick would not be enough, and infection at the base would not occur within twenty-four hours from prick at the end of finger.

Dr. B. L. Freeman, house officer at the Brockton Hospital, testified that he examined Wilds at the hospital on December 17, and found marked redness and swelling with inoculation in the right index finger, in the palmar surface near the base; lymphangitis on the surface of forearm. On the 18th he assisted Dr. McCann in operating. Deep incisions were made on the dorsal and palmar surfaces of the finger over the point of greater swelling. On December 30 another incision was made into the base of the finger and the tendons laid bare, the two incisions joined, one on the base of the finger and one on the

palm. Wilds is still under treatment at the hospital. He believes Wilds will have a stiff and useless finger. He was not prepared to say absolutely at this time whether the use of the finger would be lost. When he examined Wilds he could not see anything the matter with the end of his finger. The infection might have come from the blisters on the palm and might have come from tack prick at the end of finger. Normally he would expect infection to be localized at the point of prick.

Dr. James J. Hepburn, visiting surgeon at the Carney Hospital, Boston, Mass., summoned as an expert by the Massachusetts Bonding and Insurance Company, said that he had made no examination of Wilds' finger, and his would be only an abstract opinion. It was possible to have infection from finger prick travel to any part of the body. A palmar infection could not get into the index finger because there was no connection with the tendon sheath. Blisters are an elevation of the superficial epidermis layer. He was not sure that there had been no penetrating wound at the base of finger, but from what he had heard believed that there was none. In nine cases out of ten an infection from a finger prick would show a local reaction at the point of prick. Continued use of the hand would be bound to aggravate any septic process by continuous massage of the injured part, but he believed that it would be absolutely impossible for a man to use his hand with septic process present in that way. A septic process in the palm would extend in the direction of the flow of lymph, — up the arm and not down the finger.

On Saturday, February 6, the committee of arbitration met at the rooms of the Industrial Accident Board and agreed to present the medical testimony to Dr. Francis D. Donoghue, advisory physician to the Board, who reported that in his opinion the tack prick should be eliminated as a cause of the man's incapacity; that Wilds had been out of work and his hands had become soft; that the work he did in the Diamond Shoe Company produced blisters and swelling of the skin; that it was reasonable to believe that the injury to the skin may have been transmitted to underlying structures, leaving an in-

filtrated area open to pus germs; that if the man had not gone to work for the second employer the base of the finger, which was swollen at the time of his entering such second employ, might have gone on to recovery, or might have gone on to suppuration; that the present condition is the result of a continuation of traumatisms occurring in both employments.

The committee of arbitration finds upon consideration of all the evidence that the employee suffered a continuation of traumatisms, the ultimate result of which was the injury which incapacitated him on December 10. The committee finds that it is impossible to fairly divide the result of the traumas received by the employee while in the employ of the Diamond Shoe Company from the result of those received while in the employ of the T. D. Barry Company, and that each of these occupational happenings was a proximate cause of the injury which incapacitated Wilds, in the sense that said injury was directly due to the combined effect of these two happenings and not to one alone. Burke *v.* Dodge, 217 Mass. 182, 184, 185; Feneff *v.* Boston & Maine Railroad, 196 Mass. 575, 582.

The committee of arbitration finds, therefore, that the occupational happenings in both employments were equal causative factors in producing his total incapacity for work, and that the Massachusetts Bonding and Insurance Company, insurer of the Diamond Shoe Company, and the United States Fidelity and Guaranty Company, insurer of the T. D. Barry Company, are jointly and severally liable for compensation to the injured employee from Dec. 24, 1914, to the time of the hearing, and during the continuation of said total incapacity, in the amount of $9.33 weekly, two-thirds of his average weekly wages, the committee finding that such average weekly wages were $14.

The committee of arbitration further finds both insurers jointly and severally liable for the reasonable medical and hospital services and medicines furnished the employee during the two weeks following his incapacity on December 10.

The committee of arbitration believes that the equitable procedure would be for both insurers to equally divide the payments under this finding.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to

review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

FRANK J. DONAHUE,
Chairman.
WILLIAM J. CRONIN,
Arbitrator for Massachusetts Bonding and Insurance Company.
JOHN P. MEADE,
Arbitrator for Employee.
JAMES O. PORTER,
Arbitrator for United States Fidelity and Guaranty Company.

CASE No. 1508.

DENNIS MURPHY, *Employee.*
ARTHUR D. JONES, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

EMPLOYEE DEFINED. IN THE USUAL COURSE OF THE BUSINESS. CLAIMANT RECEIVES INJURY WHILE ENGAGED IN PICKING APPLES. SUCH WORK NOT IN THE USUAL COURSE OF HIS EMPLOYER'S BUSINESS.

The subscriber was a mason, and the claimant had been employed by him for a period of about twenty-two years as a mason's tender. About once a month he was sent to the home of his employer to perform work about the house and premises. At the time of the injury he was picking apples.

Held, that the claimant was not entitled to compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Dennis Murphy *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1508 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, James K. R. Gamage, representing the employee, and W. Lloyd Allen, representing the insurer, heard the parties and their witnesses

in the Hearing Room, New Albion Building, Boston, Mass., on Tuesday, Feb. 2, 1915, at 2 P.M.

T. C. O'Brien appeared as counsel for the employee and John M. Morrison appeared as counsel for the insurer.

The question in this case was whether or not Dennis Murphy was an employee within the meaning of Part V., section 2 of the Workmen's Compensation Act, at the time he met with his injury on Oct. 20, 1914.

Dennis Murphy, the employee, testified that he had worked for Arthur D. Jones for twenty-two years as a mason's tender; that his work consisted mostly in digging sewers, tending plasterers and bricklayers, and cleaning-up work after the plasterers were through with their work; that on October 19 he was told by Mr. Jones to go to his house the following day in West Roxbury to pick apples; that he reached the house around 7.45 A.M. the following morning; that about once a month he went out to Mr. Jones' house to do odd jobs, such as sawing wood and cleaning the cellar; that he was directed by Mr. Jones to get a ladder and pick the apples; that these apple trees were on a piece of land opposite Mr. Jones' house; that he had been picking apples about two hours when the limb of the tree broke and he fell to the ground, a distance of about 20 feet; that he sustained a fractured spine and bruises to his shoulder and had three teeth knocked out; that he was taken to the hospital in an ambulance and remained in the hospital for five weeks; that since leaving the hospital he has returned there once for treatment.

Arthur D. Jones testified that he leased the land on which the apple trees were situated from the New York, New Haven & Hartford Railroad; that there were a number of fruit trees on this land; that until two years ago he had a garden on same, raising vegetables for his own use; that about once in three years he sold some apples and that this year he sold five or six barrels; that he leased this land and kept it in good condition because of the fact that he owned property opposite it.

The hearing was discontinued while Dr. Francis D. Donoghue, medical advisor of the Board, examined Mr. Murphy.

Dr. Donoghue testified substantially as follows: that the man, according to his statement, received a severe injury to

his back; that there is nothing now which shows absolutely what the injury was to the back, and he makes no particular complaints of the back; that his complaints are referred to his neck where the muscles which have to do with turning the head are attached to the skull; that he has thrown himself off his standing poise, and has a flat back with marked rounding of the shoulders, with head carried well forward; that, according to his story, by reason of his accident he was kept on a frame with his head well extended for quite a long period, so that now when he swings his head forward he has pain with the muscles which have to do with rotating the head; that it is not a serious thing, and to his, the doctor's, mind is a thing he probably could work with after he accustoms himself to it, but for some time after working he probably would have a crick in his neck; that it is not dangerous, simply uncomfortable while it lasts; that the sooner he accustoms the muscles of his neck to what they did before the injury, the better it will be for them; that in doing heavy work his back might give out, and he would be obliged to lay off for a day or two; that in his opinion the best thing for him to do would be to go back to work.

The committee finds that in doing the work from which the claimant received his injuries, it was not in the course of the usual trade, business, profession or occupation of the employer, which was that of a mason, and that the claimant is, therefore, not an employee under the definition of the Workmen's Compensation Act, Part V., section 2, reading as follows: "'Employee' shall include every person in the service of another under any contract of hire, express or implied, oral or written, except masters of and seamen on vessels engaged in interstate or foreign commerce, and except one whose employment is not in the usual course of the trade, business, profession or occupation of his employer. Any reference to an employee who has been injured shall, when the employee is dead, also include his legal representatives, dependents and other persons to whom compensation may be payable;" and that the insurer is, therefore, not liable to compensation in this case.

DAVID T. DICKINSON.
W. LLOYD ALLEN.

James K. R. Gamage dissents.

CASE No. 1517.

ALBERT SMITH, *Employee.*
THORNDIKE COMPANY, *Employer.*
AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. CLAIMANT WAS ENGAGED IN MAKING A KITE FOR HIS BROTHER. CLAIM DISMISSED.

The claimant was employed as a carpenter for the subscriber, and received the injury which incapacitated him while ripping a board with which to make a kite for his brother.

Held, that the injury did not arise out of the employment.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Albert Smith *v.* American Mutual Liability Insurance Company, this being case No. 1517 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman, representing the Industrial Accident Board, chairman, Dr. J. P. Schneider, representing the insurer, and Thomas F. Moriarty, representing the employee, heard the parties and their witnesses in the Selectmen's Room, Town Hall, Palmer, Mass., on Wednesday, March 10, 1915, at 11.15 A.M.

Silvio Martinelli appeared as counsel for the employee, and Gay Gleason appeared as counsel for the insurer.

It was agreed that Albert Smith was employed by the Thorndike Company, and that said company is insured by the American Mutual Liability Insurance Company; that the accident happened on Sept. 10, 1914, and that the average weekly wages of the employee were $11.88.

The contention was that the accident did not arise out of and in the course of the man's employment. Mr. Smith claimed that he was entitled to additional compensation because of the loss of a phalange.

The insurer had already paid ten weeks' compensation in this case, and its attorney stated that they had paid such compensation owing to a mistake, and because they were not in full possession of the facts.

Albert Smith testified that he lives in Thorndike and that he is a carpenter by trade. He was employed by the Thorndike Company last year, 1914, doing carpenter work for them, inside and outside; his work consisted of repairing family houses, mill floors, etc. He had worked for this company off and on for two years before he was hurt; he received the same pay all the time, and he worked five and a half days a week; he was in the carpenter shop when he hurt himself. The carpenter shop employs about nine or ten men; there are machines in the shop and also saws, and they are operated by steam and electricity; he worked at the machines now and then, but not all the time; every carpenter there is supposed to know how to use the machines and to use them whenever the necessity arises. On the day he was injured he was working on a bench saw, sawing a board 2 feet long and 6 or 7 inches wide; he was cutting it lengthwise and was pushing the board through on the saw, and when he was pretty nearly through the stick jumped on the saw and hit him across the fingers and drove them on to the saw; his thumb was completely severed at the time; the saw was not in good condition, — it needed filing; it was not cutting very well. He was attended by two doctors, — Dr. Miller and Dr. Giroux. He was paid compensation up to December 2, on which date he applied for work at the Thorndike Company, but they did not employ him; he was not able to use his thumb then, but he applied for work because Dr. Miller said he was able to work and he was going to try; his thumb is still sensitive, but it is growing less so. If he used his thumb as he did before, pushing the board on the saw, he would be taking an "awful risk." He can pick up a big nail with his thumb, but not a pin. At the time of the accident he was ripping a board; he was going to bring this board home to make a kite for his brother; he had no particular permission from the company that morning to do this work for himself; he had finished his job that he had been sent to do, and he went back to the mill, put his tools away and went to the kindling pile and took this little board from it. While he was working at it he was injured; he was doing something for himself, not for the company.

George Smith, brother of Albert Smith, testified that he is a

foreman carpenter, head millwright; he is not working at the present time, but he has worked in Boston, Springfield and Worcester; he has worked for this company, but not at this branch of the company; he was acquainted with the shop, and he did not think his brother was able to use his hand to do carpenter's work either now or a month ago.

Dr. Samuel O. Miller testified that he treated Mr. Smith at the time of his accident; he found a jagged wound at about the middle third of the left wrist; there is only a very small portion of the top phalanx of the left thumb still remaining, — about a quarter of an inch; there is about a quarter of the bone still remaining. Mr. Smith has good action in the rest of the thumb.

Dr. Charles Giroux testified that he is the physician for the lodge to which Mr. Smith belongs; the first time he saw the latter was September 10 and the last time he saw him professionally was the 1st of November; at that time he gave him a certificate and advised him to go to work, because at that time he felt that he was able to do some kind of work; if he started in at work carefully and intelligently on November 1, he would be able to do the regular heavy work of a carpenter in about five or six weeks; he thinks the stump is still sensitive at the end.

Dr. Philip Kilroy of Springfield, the impartial physician appointed by the Industrial Accident Board, made the following report: —

> Albert Smith had practically all of the terminal bone of his thumb removed as a result of his accident. He is at least as badly off as if the whole bone (called phalanx) were missing; he has a good stump, but like all stumps, it has remained sensitive, and I believe is still sensitive. To that extent he is correct in his statement that "he is unable to work because of the condition of his thumb."
>
> Time and use — use with its attendant pain — will in time get rid of this sensitiveness.

Evidence was introduced to show that it was customary for employees, having received permission, to make little things for themselves, more particularly handles to tools, although not strictly limited to this.

We find, therefore, that the accident which Albert Smith met

with on September 10 did not arise out of and in the course of his employment; that the man's own testimony showed that he was engaged in doing something for himself, not connected with his work, nor in any way for the benefit of his employer. We further find, as a fact, that his phalanx was not completely severed; that at least a quarter of the bone remained, and left sufficient flesh for a covering, so that he can preceptibly move the stump, and that for these reasons it does not come within that class of accidents where additional specific compensation is allowed, either for the loss of the use, or for the loss by severance, of a phalange. We find, therefore, that the employee is not entitled to compensation.

DUDLEY M. HOLMAN.
J. P. SCHNEIDER.
THOMAS F. MORIARTY.

CASE NO. 1520.

MARY MURTAUGH, WIDOW OF THOMAS MURTAUGH, *Employee.*
HURLEY & LAMBERT, *Employer.*
TRAVELERS INSURANCE COMPANY, *Insurer.*

DEATH RESULTS FROM THE INJURY. ARISING OUT OF THE EMPLOYMENT. CHAIN OF CAUSATION. EMPLOYEE COLLAPSES WHILE AT HIS PLACE OF EMPLOYMENT. DEATH FOLLOWS FROM MENINGITIS. NO CONNECTION BETWEEN EMPLOYMENT AND DEATH.

The decedent was employed by the subscribers in the performance of certain work as a plasterer. The men were paid off shortly after 11 o'clock on the morning of the occurrence. Before leaving, the employee assisted in cleaning up about the building, and when found, shortly after he began this duty, was stretched out on the floor. Medical attendance was secured. There was no evidence of bruises or shock, and death resulted from meningitis, having no relation to the employment.

Held, that the death of the employee was not due to a personal injury under the act.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Mary Murtaugh,

widow of Thomas Murtaugh, *v.* Travelers Insurance Company, this being case No. 1520 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, representing the Industrial Accident Board, chairman, Thomas R. P. Gibb, representing the dependent, and William C. Prout, representing the insurer, heard the parties and their witnesses in the Hearing Room, New Albion Building, Boston, Mass., Saturday, Feb. 20, 1915, at 10 A.M.

L. C. Doyle represented the insurer.

The question at issue in this case was whether or not the employee received a personal injury arising out of and in the course of his employment, and whether said injury had a causal relation to his death.

The report of the injury indicated that the employee was cleaning a floor when he suddenly collapsed. The insurer claims that there was no connection between the collapse of the employee on Nov. 21, 1914, and his death five days later.

Mary Murtaugh, the widow of the deceased employee, testified that her husband had been a healthy man, and had never been treated for any trouble. He was not a drinking man, although he took a glass of ale once in a while. On Nov. 21, 1914, he ate his usual breakfast, consisting of an orange, a cup of tea, two eggs and bread and butter. He did not complain of any headache, and appeared to be well. The night before he had broken wood in the cellar and had done odd chores around the house. She could not say how the accident occurred, as her husband never regained full consciousness after the injury. About eight years ago he had been hit with a brick and had his skull cracked.

Dr. Eugene T. Galligan, family physician of the Murtaugh family, testified that he had never been called to attend Mr. Murtaugh during his eight or nine years of acquaintance. On the day on which the injury was claimed to have occurred, Mrs. Murtaugh came to him and requested him to go to the hospital and see her husband. On Nov. 22, 1914, he went and found Murtaugh partially unconscious, unable to speak distinctly, although he made attempts to do so. He took the pulse which was very high, and came to the conclusion that

Murtaugh was suffering from a cerebral hemorrhage caused by stooping over, in his occupation, which increased the blood pressure in a weak blood vessel, causing a clot of blood in the brain. Dr. Galligan was later recalled, and in reply to questions, stated that stooping over in a normal man would not burst a blood vessel, and, as far as he knew, Murtaugh was perfectly healthy. He could not say whether the former injury had any bearing on this case or not, but the man had worked every day since.

Hugh McFarlane, a fellow employee, testified that he and the employee, Murtaugh, began work as usual at 8 o'clock on the day upon which it was claimed the injury occurred. McFarlane was the plasterer and Murtaugh was his helper. They were working in the Franklin Square House, and about quarter past 10 Murtaugh informed McFarlane that he had a headache, but declined to go home, stating that he would remain at work, as it was only a short day. The foreman came and paid the men off, and they started to clean up about ten minutes past 11. There was a good deal of stuff on the floor and Murtaugh took a trowel and began to clean it. When the latter reached the radiator, McFarlane was in the corner sweeping, and did not look around for a period of about five minutes. When he turned around Murtaugh was kneeling on the floor on his left knee, and his right leg was out straight. His head was up against the radiator with his hand behind it. McFarlane went for a nurse in the building, and was requested to bring the employee into the library. At the place where the employee was found there was an electric wire on the floor, but to his knowledge there was no electricity in it. The employee was found in this position about ten minutes of 12. McFarlane stated that there was a great deal of stooping in connection with the work of a helper. To his knowledge Murtaugh was a strong man.

Dr. Hilbert F. Day, house physician for the Franklin Square House, testified that he was called on Nov. 21, 1914. He found a well-developed, strong man, weighing about 170 pounds, lying on the library table. There was a bluish tinge on the face, pulse about 100, pupils equal and no trace of any bruise that he could determine. On account of the serious condition

of the man he ordered him removed to the City Hospital. The doctor stated that it was consistent with meningitis to complain of a headache early in the day, and that he had considered cerebral hemorrhage, but ruled it out, as he found nothing that would indicate that the man had one. He could not determine any paralysis. The fact that the man's temperature three days after rose to 103 indicated that there was an infection present. Leucocytes develop in an attempt to overcome infection, and a high per cent. indicated an infection which the blood was trying to overcome. The doctor found no evidence of an electric shock, and considered there was no connection between the occupation of the employee and his condition.

Miss Ida Hutsell, resident nurse at the Franklin Square House, testified that she was called to attend Mr. Murtaugh by the superintendent. She had the employee placed on the library table and stretched out. He sort of squirmed, but had no convulsions. She worked over him with cold water and immediately got in touch with Dr. Day, who arrived in about twenty minutes. There was no evidence of any bruise to indicate injury.

Dr. Norman B. Cole, connected with the City Hospital, testified that he diagnosed the case as meningitis. The lumbar puncture which was made, resulting in a cloudy fluid, with leucocytes, indicated an infection in the spinal canal. The meningoccic serum is injected into the spinal canal as a matter of routine, whether it is known that the man has meningitis or not. Leucocytes were found but were not isolated. The blood pressure was 135, — a little above normal. There was no evidence of any shock, and no bruises were on the body. No arteriosclerosis was present, and the kidneys were all right. The doctor saw no connection between the man's employment and his death, but requested an autopsy performed in order to clear up the origin of the infection. Stooping over in a normal man, with his blood pressure all right, would not cause cerebral hemorrhage or meningitis.

The committee of arbitration finds upon all the evidence that the employee, Thomas Murtaugh, did not receive a personal injury arising out of and in the course of his employment, and that his death from meningitis had no causal relation to his

employment. The committee therefore dismisses the claim of the widow, Mary Murtaugh, there being no liability upon the insurer under the Workmen's Compensation Act.

JOSEPH A. PARKS.
WILLIAM C. PROUT.
THOMAS R. P. GIBB.

CASE NO. 1521.

JOHN MAZARIELLO, *Employee.*
MENDEL YERETSKY, *Subcontractor,* TALBOT COMPANY, *Employer.*
ROYAL INDEMNITY COMPANY, *Insurer.*

INDEPENDENT CONTRACTOR. CLAIMANT WAS EMPLOYEE OF AN INDEPENDENT CONTRACTOR. LATTER NOT INSURED UNDER ACT. GENERAL CONTRACTOR COVERED BY INSURANCE. INSURER OF LATTER LIABLE UNDER STATUTE. COMMON LAW RELEASE SECURED FROM CLAIMANT BY EMPLOYEE OF INSURER. SUCH ACT WITHOUT AUTHORITY. COMPENSATION AWARDED.

The evidence shows that the business as conducted by the general contractor and the independent or subcontractor in this case was practically one and the same; that the employee was engaged by the independent contractor, who was not insured under the act; and that the general contractor was covered by insurance.

Held, that the employee was entitled to compensation.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John Mazariello *v.* Royal Indemnity Company, this being case No. 1521 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, George P. O'Brien, representing the employee, and Walter A. Ladd, representing the insurer, heard the parties and their witnesses in

the Hearing Room of the Board, New Albion Building, Boston, Mass., on Wednesday, Jan. 20, 1915, at 10 A.M.

Freeman Hunt appeared as counsel for the employee, and Arthur H. Stetson appeared as counsel for the insurer.

John Mazariello, the employee, testified that he worked for Mendel Yeretsky as a tailor; that on Oct. 20, 1914, while pressing a piece of clothing with a pressing machine, the pressing iron went so rapidly that it ran against his left thumb, burning and jamming it; that after this happened he went to the Relief Station where a doctor gave his finger medical attention; that this doctor told him about the Workmen's Compensation Act; that the next morning he told Mr. Yeretsky about the accident; that two days after the accident Yeretsky took him down to the Talbot Company on Washington Street; that Mr. Macomber, vice-president of the Talbot Company, Mr. Toombs, representing the Royal Indemnity Company, Mr. Yeretsky and himself were present; that Mr. Yeretsky told him that he would give him $20, and that at the end of four weeks, if he was not able to work, he would give him $5 a week until he was able to return to work; that Mr. Toombs, representing the insurer, then drew up a paper and told the injured employee to sign same; that Yeretsky told him this paper was for the $20 which he had received; that the witness then saw Mr. Toombs pass the money behind his back to Yeretsky, and that Yeretsky gave the money to him; that he, the employee, did not know that this was a release of his rights; that he thought it was a receipt for the $20 which he received; that he could read a few words in English with his finger on the paper; that before the four weeks were up he went down to Yeretsky's shop on Harrison Avenue Extension and asked him for more money; that Yeretsky told him he would not give him any more money; that he was out of work from Oct. 20, 1914, until Jan. 18, 1915.

The report of the injury on file with the Board shows that the average weekly wages of the employee at the time of his injury were $11.

It appeared that the employee did not understand the meaning of a good many phrases in the course of his conversation, as, for instance, when he was told to "go on" with his testi-

mony he understood it meant to leave the room, and started to do so.

George A. Macomber testified substantially that the work which Yeretsky did for the Talbot Company was let out on invoices, a certain number of pieces to an invoice; that these invoices were returned when the work was done, and Yeretsky was paid a certain amount for each garment; that most of the work which Yeretsky did was for the Talbot Company, and that the Talbot Company's orders must be filled in preference to any other work which Yeretsky may have; that when the Talbot Company was not busy, it did not object to Yeretsky doing work for other concerns; that the building at 21 Harrison Avenue Extension was leased by the Talbot Company, and that the Talbot Company sublet the building to Yeretsky and other tailors who did work for the company; that Talbot Company's name appeared on a sign on the roof which read "Talbot Shops;" that the Talbot Company or its representatives did not direct the work at the shops on Harrison Avenue, but gave all instructions to Yeretsky on the invoice slips which were sent with the goods; that a representative of the Talbot Company went through the shops of the tailors on Harrison Avenue almost every day to look over the work and report any defects in the work to Yeretsky; that Yeretsky was also employed by the Talbot Company as an expert tailor to supervise the work in his own and the other shops in the Harrison Avenue Extension, and received a salary for doing this work of supervising and instructing; that this work of supervising was entirely independent of his contract work, and that he had been doing this work of supervising for about two or three years; that there was no written contract between the Talbot Company and himself, the only contract being the invoices on which the work was sent out; that the Talbot Company had a private telephone wire running from the switchboard of the Talbot Washington Street Store to Yeretsky's shop for the private use of the Talbot Company. Mr. Macomber further testified that Yeretsky told him about the accident to Mazariello, and wanted to know what he should do about it, as he was not insured; that he, the witness, told him that the Talbot Company was not liable, but that he would help him out if he

could; that Yeretsky and Mazariello came to the office of the Talbot Company a few days after the accident, and that he, the witness, asked Mr. Taylor, a bookkeeper in the employ of the Talbot Company, to telephone to the insurance company and have a man come down to the office of the Talbot Company; that in response to that telephone call Mr. Toombs of the insurance company came to the Talbot Company's Washington Street store; that he, the witness, advised them to make a settlement if they could; that they had some conversation together while he was busy at his desk; that Mr. Yeretsky gave the money to Mazariello, and that Mr. Toombs did not handle the money.

Mendel Yeretsky testified that he owned the machinery in his shop; that he paid his rent to the Talbot Company in cash and was paid by the Talbot Company for every garment; that he kept a bank account and paid his help from the money he drew from his bank account; that if he was short of money he went to the Talbot Company and got the cash which might be due him and used this money to pay his help; that there were three other tailoring concerns in the building on Harrison Avenue which did work for the Talbot Company; that these contractors paid their rent to the Talbot people; that the highest price work was done in his, Yeretsky's shop; that the Talbot Company paid for the sign which was on top of the building reading "Talbot Shops." Mr. Yeretsky further testified that he did not see the accident to the employee; that the morning after the accident Mazariello came to him and asked him if he was insured, and that he told Mazariello that he was not; that Mazariello then asked him if the Talbot Company was insured, and he told him that it was, but that it was not liable for his accident; that the next morning the witness and the injured man went to the Talbot Company's office on Washington Street; that the insurance company's representative came down to the office; that Yeretsky then told Mazariello that he would give him $20, and the insurance man drew up a release; that the injured man read the release and signed it; that Mazariello was familiar with the English language and could read same easily; that he told the injured man if at the end of four weeks he had a doctor's bill he would give him $5 to pay same.

Fred H. Toombs, adjuster for the Royal Indemnity Company, testified that he was called by Mr. Taylor of the Talbot Company to come up to the Talbot Company's office and settle a case; that Mr. Macomber, Mr. Yeretsky and the injured man were present; that Yeretsky was having some talk with Mazariello; that he, the witness, then questioned the injured man as to his injury; that Yeretsky asked the employee what he wanted to do; that Mazariello said that he did not have any money, and that Yeretsky explained that if he took the $20 he would not have to wait two weeks, and Mazariello agreed to take the $20; that Yeretsky told Mazariello that if at the end of four weeks he had a doctor's bill, he would give him $5 to pay for same; that he, the witness, then drew up a release, and Mazariello signed same; that Yeretsky then took the money out of his pocket and handed it to Mazariello; that both he, the witness, and Yeretsky explained the language of the release to Mazariello.

The following is a copy of the release: —

RECEIPT AND RELEASE.

OCT. 23, 1914.

Received from Mr. Mendel Yeretsky the sum of Twenty Dollars $\frac{\text{no}}{100}$ ($20), which I (being of lawful age) acknowledge to be in full accord and satisfaction of a disputed claim growing out of bodily injury or property damage sustained by me on or about Oct. 20, 1914; for which bodily injury I have claimed the said Mr. Mendel Yeretsky to be legally liable, which liability is expressly denied, and in consideration of said sum so paid, I hereby remise, release and forever discharge the said Mr. Mendel Yeretsky, heirs, successors, administrators and assigns from any and all actions, causes of actions, claims and demands for, upon or by reason of any damage, loss, injury or suffering which heretofore has been, or which hereafter may be, sustained by me in consequence of such accident and injury.

Witness my hand and seal the day and date first above written.

GUISEPPE MAZARIELLO.

Witness, FREDERICK H. TOOMBS.

It was agreed by counsel for the insurer at the hearing that but for the release, Mazariello was entitled to compensation from the insurer as an employee of an independent contractor under section 17, Part III. of the act. The insurer claimed that the release signed by Mazariello to Yeretsky, as above stated,

prevented his proceeding for compensation against the insurer under said section 17, being so prevented by the terms of section 15, Part III. of the act. The insurer claimed that by this settlement with Yeretsky the injured employee had made a proceeding and settlement with a third party, and hence could not proceed afterwards for compensation from the insurer, which he otherwise could have done.

Counsel for the employee claimed that the business as conducted by the Talbot Company and Yeretsky at the shops on Harrison Avenue Extension, where Mazariello was employed, was practically the business of the Talbot Company, and that said Talbot Company was virtually the proprietor or operator of the business as carried on at the Harrison Avenue shops, although Yeretsky directly hired and employed the claimant; and that Yeretsky was virtually only a superintendent of the Talbot Company, and that the employee was injured in doing the work on the clothing belonging to the Talbot Company under the arrangement between the Talbot Company and Yeretsky. Counsel for the employee also contended that under the meaning of the Compensation Act the said Yeretsky was not a third party as contemplated under said section 15, Part III., and that the release given to an independent contractor who was doing the work of the principal subscriber, as was done in this case, could not be held to be a discharge of the rights of the employee against the insurer for compensation. Counsel for the employee also claimed that the release, obtained under the circumstances, as appeared in evidence, was invalid and of no effect in accordance with section 20, Part II. of the act, which provides that "No agreement by an employee to waive his rights to compensation under this act shall be valid."

The committee finds that the business of Yeretsky, the alleged independent contractor, was so closely identified with that of the Talbot Company that a distinction between the two is very hard to draw; and that for the purposes of the Workmen's Compensation Act and in accordance with its intent, and especially with the intent of the act as expressed in section 17, Part III., the Talbot Company was virtually the proprietor and operator of the business carried on under the direction of

Yeretsky at the shops on Harrison Avenue, known as the Talbot Shops, in the course of which the employee received his injury.

The committee also finds that the employer, the Talbot Company, and the insurer were practically identical, as representing the insurer and the insurer's obligation, in their conversation with the employee at the Talbot Company's store on Washington Street, when he, the employee, signed the release to Yeretsky, who was also present; that the insurer, when called by the subscriber to participate in the interview and arrangements with the employee, did not perform his full duty, considering the relation of the insurer to the employee, in withholding the information from the employee that said insurer was liable to him for compensation; that the representative of the insurer in drawing the release and obtaining its signature by the employee, without informing him of his right against the insurer to compensation, cannot set up this release to Yeretsky, so obtained, as a discharge of the liability of the insurer to the employee for compensation; and that the participation of the insurer through its agent, in thus securing an ostensible discharge and release of its liability through said release to Yeretsky, was a breach of the fiduciary or semi-fiduciary relation and obligation of the insurer toward the employee, who was then a beneficiary under the insurer's policy without such fact being disclosed to him by the insurer.

The committee finds that the insurer, therefore, owes the employee compensation for ten and six-seventh weeks, at the rate of $7.33 per week, being the period from Nov. 3, 1914, the fifteenth day after the injury, to Jan. 18, 1915, when the employee's incapacity for work ceased and he returned to work.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

DAVID T. DICKINSON.
GEORGE P. O'BRIEN.

Walter A. Ladd dissents.

Findings and Decision of the Industrial Accident Board on Review.

The Board heard the parties on review on March 30, 1915, and finds upon the evidence and agreement of counsel as follows: that the adjuster of the insurer who drew the release signed by the claimant had been at the time but a few days in the employ of the insurer, and was without previous experience with the compensation law or its requirements; that his drawing said release was done without direction or authority from his superiors; that any breach of fiduciary duty was done inadvertently and without intention; that there is due the claimant a weekly compensation for total incapacity of $7.33 for a period of ten and six-seventh weeks, $79.58, said weekly compensation being two-thirds of his average weekly wages; and that with the exception of these modifications the findings and decision of the committee of arbitration are affirmed and adopted.

DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE NO. 1527.

MARGARET O'MALLEY, WIDOW OF PATRICK O'MALLEY, *Employee.*
LEIGHTON & MITCHELL COMPANY, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

FATAL ACCIDENT. AVERAGE WEEKLY WAGES. EMPLOYED ONLY SHORT TIME BEFORE DEATH. EARNINGS IN OTHER EMPLOYMENTS NOT CONSIDERED. AVERAGE FIXED BY EARNINGS OF ANOTHER EMPLOYEE OF THE SAME EMPLOYER.

The employee went to work on Jan. 28, 1914, and was killed on April 20, 1914. He worked five hundred and fifteen hours and received $180.23, at the rate of 35 cents an hour. He had earned more or less working for other employers in the year prior to his death. Another employee who had worked a full year for the same employer averaged $16 a week.

Held, that the average weekly wages of the employee were $16.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Margaret O'Malley, widow of Patrick O'Malley, *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1527 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, David J. Maloney, representing the insurer, and Joseph R. Cotton, representing the employee, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, New Albion Building, Boston, Mass., Friday, Feb. 26, 1915, at 10 A.M.

Gay Gleason appeared as counsel for the insurer, and Guy E. Healey appeared for the widow.

The employee, while employed by the Leighton & Mitchell Company, on the Boston Athenæum April 20, 1914, was struck by a falling beam, fell three stories and was instantly killed. By an agreement between the widow and the insurer, compensation had been paid at the rate of $8 per week up to and including Feb. 15, 1915.

The question was as to the average weekly wages.

The material evidence was substantially as follows: —

The deceased went to work for Leighton & Mitchell Company on Jan. 28, 1914, and his period of employment up to the time of his death covered thirteen weeks or parts thereof. He was employed five hundred and fifteen hours, and received in wages $180.23, being paid at the rate of 35 cents an hour. He was employed as a laborer. For five weeks prior to Jan. 15, 1914, he was employed by Whidden & Co., his grade of employment not being stated. His compensation for the five weeks he worked amounted to $56.80. From Nov. 13, 1913, to Dec. 4, 1913, he was employed by Tyson, Weare & Marshall Company, working, in all, one hundred and ten and one-half hours, and receiving as compensation $69.05. Here he was paid at the rate of 62½ cents an hour, being employed as a rigger. From early in 1912 until the fall of 1913 he was employed by J. M. & C. J. Buckley Company. Here he was

employed as a tagman, his average rate of wages being $17.24 a week.

This is a case where, by reason of the shortness of the time during which the employee had been in the employment of his employer, and the nature and terms of his employment, it becomes necessary to have regard to the average weekly amount which, during the twelve months previous to the injury, was being earned by a person in the same grade employed at the same work by the same employer.

Evidence was introduced at the hearing to the effect that one Ferretti, who had been employed as a laborer (the grade in which O'Malley was working at the time of his death) by Leighton & Mitchell Company, had received during the fifty-two weeks prior to the time of O'Malley's death an average weekly wage of $15.35. The original agreement by which O'Malley's average weekly wage was fixed at $16 had as its basis the average weekly wage of one Michael Murray, who was employed by the same firm in the same grade of employment as O'Malley. His average weekly wages were $15.99. This basis the committee believes to have been proper.

The committee of arbitration, therefore, finds that the average weekly wages being earned by Patrick O'Malley at the time of his death was $15.99, and compensation shall be continued for the statutory period at the rate of $8 per week, the amount previously agreed upon.

FRANK J. DONAHUE.
DAVID J. MALONEY.
JOSEPH R. COTTON.

CASE No. 1529.

MARGARET L. CURLEY, GUARDIAN OF NORA CURLEY, ALLEGED DEPENDENT OF JOHN CURLEY (DECEASED), *Employee.*
CAPE ANN ANCHOR & FORGE COMPANY, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DEATH RESULTS FROM THE INJURY. WHOLLY DEPENDENT FOR SUPPORT. DAUGHTER OF DECEDENT, WHO PERFORMED GENERAL WORK OF KEEPING HOUSE FOR HER FATHER AT TIME OF AND PRIOR TO HIS DEATH, WHOLLY DEPENDENT. ALL HER SUPPORT CAME FROM HER FATHER. NO AGREEMENT WITH REGARD TO THE MATTER OF WAGES.

The claimant, Nora Curley, daughter of the decedent, was nineteen years old on July 23, 1914, and performed the general work of keeping house for her father at the time of, and for some time prior to, the date of his injury and death. There was no agreement between the claimant and the employee with regard to the matter of wages for the services rendered by her. All the support that she received came from her father, who provided her with clothing, food and shelter. The other members of the household were a brother and sister, the latter of whom had occasionally given her small sums of money.

Held, that the claimant was wholly dependent upon the decedent.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John Curley, deceased, *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1529 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Maurice F. Foley, representing the dependent, and W. Lloyd Allen, representing the insurer, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Gloucester, Mass., on Friday, March 5, 1915, at 11 A.M.

M. Francis Buckley appeared as counsel for the dependent, and John M. Morrison appeared as counsel for the insurer.

The deceased employee on July 20, 1914, received an injury

arising out of and in the course of his employment, from the effect of which he died on July 27, 1914. His average weekly wages were $10.53. He was at the time operating a hammer when the tongs flew up, striking him on the chest and under the chin, and injuring him so that he died. The alleged dependent, Nora Curley, is the minor daughter of the deceased, age nineteen years at the time of the injury. His other children were a daughter, Margaret L., aged twenty-three years, and a son Michael, twenty-two years, who all lived with the deceased at the time of his injury and death. The children's mother had died before the employee.

Nora Curley testified substantially that she was nineteen years of age on July 23, 1914; that at the time of her father's injury she kept house for him, doing the housework; that she received all her support and clothing from her father; that the family at the time of her father's death consisted of her brother Michael, twenty-two years of age, her sister Margaret, twenty-three years of age, her father and herself; that her sister and brother worked and were not dependent upon her father; that she did not receive any wages or anything toward her support from any person other than from her father. In answer to questions in cross-examination, the witness testified that she had never received any money from her brother Michael before her father's death, and had not told her attorney or Mr. Prime, an investigator for the insurance company, that she had received any money from her brother; that at the present time she is keeping house for her brother and sister; that she handles the money now at the house; that when her father was living her brother and sister paid their money to her father; that her father gave her the money and she paid the grocer's bill; that her brother Michael now turns over to her $12 a week, and she gives back to him whatever he needs for his own expenses; that her sister Margaret turns over her money also; that Margaret gave her small amounts of money, such as 25, 10 or 15 cents, with which she bought candy; that Margaret never gave her money to buy clothing; that she is physically healthy; that she does all the housework except the washing, which is sent to a laundry; that the work she did for her father was worth as much to him as what he gave her in return, and that she would have expected that what she

did for him would have been worth just as much if she had done it in the labor market outside.

There was no evidence of any wage ever having been agreed upon or mentioned by either the father or the claimant in connection with the housework and services performed by the claimant, or that the father paid any money to the claimant.

No witnesses were called by the insurer, or other evidence offered by it.

The insurer contended that the claimant's testimony should be rejected, alleging that it had been discredited by the cross-examination, and that it was contrary to probabilities which her testimony disclosed.

The committee finds that the said Nora Curley did the general work of keeping house for her father at the time of his injury and death, and that she had been doing this for some time before; that there were living with the family at the time of his death, and before, her brother and sister, the aforesaid Michael and Margaret, aged twenty-two and twenty-three years, respectively; that the brother and sister paid over their earnings to the father, and that the father's earnings were $10.53 a week; that the claimant received her entire support from the earnings of her father who provided her with her clothing, food and shelter; that she received no contributions from her brother before the father's death, and only occasional presents of a small amount of coin, sufficient to purchase candy, from her sister.

The committee finds that she was totally dependent for her support upon the earnings of her father at the time of his injury and death, and that she is entitled to a compensation of $5.27 per week for a period of three hundred weeks from July 20, 1914, the date of the injury. (George Herrick's Case, 217 Mass. 111.)

DAVID T. DICKINSON.
MAURICE F. FOLEY.

W. Lloyd Allen dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, April 22, 1915, at 10.30

A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that the claimant, Nora Curley, a daughter of the deceased employee, John Curley, was wholly dependent for support upon his earnings at the time of his injury and death, said injury and death arising out of and in the course of his employment. Nora Curley, who was nineteen years old on July 23, 1914, did the general work of keeping house for her father at the time of, and for some time prior to, the occurrence of his injury and death. The other members of the household were a brother and sister, Michael and Margaret Curley, aged twenty-two and twenty-three years, respectively, the former never having made her any gifts of money and the latter having occasionally given her small sums, such as 25, 15 and 10 cents, with which she purchased confectionery. There was no agreement between the claimant and the employee with regard to the matter of wages for the services rendered by such claimant. All the support that the claimant received came from her father, John Curley, who provided her with clothing, food and shelter. She was wholly dependent upon his earnings for support at the time of his injury. The average weekly wages of the employee were $10.53.

The Industrial Accident Board finds, upon all the evidence, that the claimant, Nora Curley, a daughter of the employee, John Curley, was wholly dependent upon his earnings for support at the time of his injury, and is entitled to a weekly payment of $5.27 for a period of three hundred weeks from July 20, 1914, the date upon which the injury occurred.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE NO. 1530.

DANIEL NAGORNIE, *Employee.*
ARLINGTON MILLS, *Employer.*
AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

ABILITY TO EARN. CHAIN OF CAUSATION. NEW CAUSE INTERVENING. EMPLOYEE RECEIVES INJURIES TO FINGERS OF RIGHT HAND. SUBSEQUENTLY CLAIMS PAIN IN LEG CAUSES HIM TO USE CRUTCHES. NO CONNECTION BETWEEN ORIGINAL INJURY AND LEG CONDITION. CLAIM DISMISSED.

The employee received an injury to the second, third and fourth fingers of his right hand on Feb. 20, 1913. Subsequently he claimed that his leg pained him so that he was obliged to use crutches to relieve the condition, and that such condition was due to the original injury. The weight of the medical evidence failed to sustain the claim.

Held, that the employee was not entitled to compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Daniel Nagornie *v.* American Mutual Liability Insurance Company, this being case No. 1530 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Thomas F. Boyle of the Industrial Accident Board, chairman, Jeremiah F. Mahoney, representing the employee, and Irving W. Sargent, representing the insurer, heard the parties and their witnesses at a hearing room in the Court House, Lawrence, Mass., on Friday, Feb. 19, 1915, at 1.30 P.M.

C. J. Mahoney of Lawrence appeared for the employee, and George W. Kenney of Boston appeared for the insurer, as counsel.

It is agreed that Daniel Nagornie, on Feb. 20, 1913, while pushing a coal car along the track, caught his hand between the bumpers and injured his second, third and fourth fingers of his right hand. His average weekly wages at the time of the injury were $8.64.

The question at issue in this case is that of incapacity for work, that is, whether the employee, as a result of the injury of Feb. 20, 1913, is now wholly or partly incapacitated. The employee also contended that without any intervening cause his leg began to pain him a few months ago, and that since that time he has been obliged to use crutches. The condition of pain in his leg is attributed to the injury of February, 1913.

The evidence was substantially as follows: —

Dr. J. F. Howard, appointed as impartial physician to examine this employee, testified: —

I find that he complains of inability to flex the middle finger of the right hand, but by having Dr. Daley distract his attention I was easily able to flex the finger without pain. Previous to this, without distracting his attention, he complained of complete inability to flex the finger, and complained of extreme pain, whereas when I distracted his attention he flexed it easily. He was able to bend all the other fingers, and only claimed he was unable to bend the middle finger. He did not claim the other fingers were stiff. I do not think this one finger would incapacitate this man for doing manual labor. There is nothing the matter with his hand now. I also examined his leg, and the measurement of both legs was equal. There is no obstruction of circulation in the leg. I find a little reddening, a glossiness of the skin. This condition is found in alcoholism. You will also find this condition in neuritis, but in this case the reflexes are normal and equal in both legs. I do not know of any reason for his carrying the crutch. He complains of pain in his leg. To me he has the appearance of a drinking man, — a moderate, steady drinker. If he said he had not drunk for a year I would doubt it, from his general appearance. If it is true that he is unable to work and complains of a disabled finger, you would naturally expect some change in that finger. You would find a stiffening or some change in the shape of the joint, but I do not find either of them.

Dr. Timothy J. Daley testified: —

I examined this man yesterday as to the use of the middle finger of the right hand. I find he has full flexion. I find no evidence of any adhesions, no articular change, no deposit in the joint; the circulation is normal, and by distracting his attention I was able to fully flex his finger. There was no atrophy of the muscles, just a linear scar on the flexor surface of the middle finger of the right hand. He resisted flexing and extending the finger in active or passive motion. I find no difference in the size of the right middle finger and the left middle finger. There is an enlargement of the terminal joint of that phalange, which shows an injury, but the finger is normal. I examined his leg and find what I would call atrophy of

the muscles, a bluishness of the skin, and the arches of both feet have dropped. I find a glossiness of the skin which is coincident with what we call "wine skin," found in a man who drinks. The measurements of both legs were equal; the circumference was taken at the knee joint. I did not find any difference in the tissue. I found blotches on the skin due to "spirits." This generally dates back a long while. I have never seen injury cause this. I think there is an alcoholic history. I do not think the injury has any relation to his condition. From the history I got from him and from a physical examination I think it is from "spirits." His blood pressure was normal. I think he is in good shape. He has full flexion in the right hand.

Dr. Carl Moeckel testified: —

I attended this man at the time of the injury, Feb. 20, 1913. He had lacerated wounds of the second, third and fourth fingers of his right hand. The third finger was more seriously injured than the second or fourth. The second and fourth fingers had superficial lacerations. The laceration in the third finger was between the second and third joint, and went down quite deeply but did not involve the joint itself. He came to me daily for dressings up to February 27, and then came every other day at regular intervals until the 15th of March, and that was the last time I saw him. The wound was healed on the 15th of March, but there was some stiffness in the finger due to the fact of it having been bandaged. I have not seen him since until to-day. The insurance company paid me for attending to this man, not only for the first two weeks but until the case was finished. While being dressed his hand was in a sling. He could not work with it while injured. After the 15th of March, 1913, he might have done light work. There were no bones broken.

Daniel Nagornie, the injured employee, testified: —

It will be two years to-morrow since I was hurt at the Arlington Mills. After the injury I used to sweep the floor and wash the windows. Before the accident I shoveled coal. Before the accident I earned $8.64 a week, but after the accident I do not remember how much I got, — I think just the same. I worked at the mill until May 24, 1913, and they told me then that work was slack. There was some heavy work, but I could not do it. I went back every day and asked for work, and then the agent gave me 50 cents and told me not to come any more. After that I used to work a half day here and a couple of hours there, wherever I found it. I then went to work at the Lawrence Company in Peabody. I did not work at all in 1913. I do not remember when I went to work, but I know that it is now seven weeks since I got through there. I dropped on the floor and somebody brought me home. I went to Peabody to work because they had work for me there. I used to work there before. I washed skins at

the Peabody Company and worked on the roll machines after the accident. I started to work last spring and worked until Christmas. I do not remember how long my hand was done up, but think it was fourteen weeks, because at first I went to the doctor's every day, and then once a week and then once in three weeks. I had the same doctor all the time. I had my hand between two pieces of wood for two weeks. I went to a Russian doctor in Chelsea afterwards. I think it was sometime after Christmas, 1913, that I returned to work. I did not lose any time immediately after the accident until I was laid off in May.

Dr. John B. Baine testified: —

When I examined this man he was unable to bend the middle finger of his right hand. I made the examination to-day. He flexed the other fingers, but I could not get him to shut up his right hand. He also complained of pain in his right knee running down to his right ankle, and he walked about the office on his heel. The lower part of the right leg has a sort of purplish blue discoloration, such as is seen in a scar after it is healed over. I could not say positively how this condition came about. It might be neuritis or functional disorder. I think it is functional disorder. There is a possibility that an injury would cause a nervous condition, and whether this is absolutely responsible for the nervous condition I do not know. I tried to distract his attention, but I could not shut his hand. He could do work if he could flex that finger. It might be a useful working finger if he relaxed it. The condition would prevent him from shoveling coal because he cannot shut his hand perfectly. If he could flex his finger I think he could shovel coal. It seems this condition of the leg, as I understand it, came up quite recently. A nerve shock of any kind might produce temporary loss of function of any part, but as a rule this would follow within a short time after the accident. I have never heard of an accident causing a condition such as his is at the present time, but it is a possibility.

The evidence shows that there is no connection between the condition which requires the employee to use crutches and the injury of Feb. 20, 1913, two physicians who testified before the committee of arbitration stating that, in their opinion, the cause of the leg condition was alcoholism.

With reference to the original injury, the weight of the medical evidence showed that no incapacity resulting therefrom remained, the statements of the employee that he was unable to flex his middle finger being disproved by the impartial physician, Dr. J. F. Howard, who was able to flex same without pain when the attention of the employee was diverted.

The committee of arbitration finds, upon all the evidence, that the employee, Daniel Nagornie, is not now incapacitated for work in whole or in part by reason of the injury received on Feb. 20, 1913, and has never been incapacitated for work by reason of said injury, and is, therefore, not entitled to compensation.

THOMAS F. BOYLE.
IRVING W. SARGENT.

Jeremiah F. Mahoney dissents.

CASE No. 1539.

BERNARD E. HUGHES, *Employee.*
JAMES S. DOHERTY, *Trustee,* OLMSTEAD & TUTTLE COMPANY, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

ARISING OUT OF THE EMPLOYMENT. NEW CAUSE INTERVENING. RECURRENCE OF INCAPACITY. OPERATION. EMPLOYEE RETURNS TO WORK BEFORE INCAPACITY HAS CEASED. REDISLOCATES SHOULDER WHILE PUTTING ON HIS COAT AT HIS PLACE OF EMPLOYMENT. THIS IS A RECURRENCE OF OLD CONDITION, AND ARISES OUT OF EMPLOYMENT. REFUSAL OF OPERATIVE TREATMENT NOT UNREASONABLE UNDER THE CIRCUMSTANCES.

The employee received an injury on Nov. 9, 1914, by reason of which his right shoulder was severely dislocated. The employee returned to work, apparently having recovered to such an extent as to permit him to resume his usual occupation. Later, under apparently no provocation, while putting on his overcoat, before leaving his place of employment, the shoulder became dislocated again, and the employee was incapacitated for work. The medical evidence showed that, because of the original injury, the shoulder was likely to become dislocated at any time, and that such dislocation was likely to happen anywhere and at any time, if the employee got his arm into any peculiar position. The insurer offered operative treatment, which the employee refused to accept. The evidence showed that present treatment probably will give the employee a fairly useful shoulder.

Held, that the second injury was a recurrence of the first, and arose out of the employment; that the employee had not acted unreasonably in declining to accept the operation.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Bernard E. Hughes *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1539 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Charles L. Young, representing the employee, and Thomas H. Kirkland, representing the insurer, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, 423 Main Street, Springfield, Mass., on Tuesday, March 9, 1915, at 11.30 A.M., and on Tuesday, March 30, 1915, at 2 P.M.

N. J. Rice appeared as counsel for the employee, and T. C. Maher appeared as counsel for the insurer.

The contention of the insurance company is that the dislocation received by the employee on Dec. 13, 1914, did not arise out of and in the course of his employment.

Bernard E. Hughes was an employee of James S. Doherty, trustee of Olmstead & Tuttle Company, city of Chicopee. On Nov. 9, 1914, while at work in the boiler room, he was injured by falling from the top of the boiler. He grabbed a rod and swung off and dislocated his right shoulder. On June 30, 1914, he had received an ordinary dislocation of his right shoulder, and was attended by Dr. Charles F. Lynch of Springfield in the Mercy Hospital. He had fully recovered from this injury on the evidence of Dr. Charles F. Lynch. Dr. Lynch testified, however, that it is a fact that in a man of his years, who had suffered one dislocation, it was easier for him to have a dislocation than one who has never had one; that when the shoulder is dislocated it is lacerated and tears the capsule, and it is a very well-known medical fact that if a joint capsule has once been lacerated the scar is not as firm and has not as much resistance as a normal capsule would have. He did not think, however, that the first dislocation had anything to do with the accident at Olmstead & Tuttle's on November 9.

For the accident of November 9 he was paid $10, — two-

thirds of his average weekly wages during the period of his incapacity, and later returned to work. On December 13, Sunday, after he had finished his work, — his duties requiring him to be there on Sunday and attend to the fires, — as he was putting on his overcoat, he threw his shoulder out of place. As a result of this injury of December 13 he was not able to return to work, and was afterwards discharged. It further appeared in evidence that he has since tried to work at the Gas Company, and failed because of his inability to work, and since that time he has not been able to do any work.

Mr. Hughes was the engineer at this plant. It was a part of his duty to go there on Sundays and attend to the fires, and on the Sunday in question he had been there and had attended to the fires, and while he was putting on his coat, after having completed his work, in preparing to leave for home, he threw out his shoulder.

Dr. Dudley Carleton testified: —

The usual dislocation of the shoulder generally stays in perfectly well after two weeks, and can be used comparatively well, and while a previous dislocation undoubtedly makes a man more liable to more dislocations, they do not occur very often, and I do not believe the usual dislocation causes a capsule joint to strain, — it possibly pulls things out of position and when put in, capsule ligaments stay in normal condition. I very seldom see a man who has more than one dislocation. The first injury at Olmstead & Tuttle's, I think, is a serious injury. That night a very unusual thing happened, — his arm redislocated itself. His arm was in the sling, which is usually enough to protect the shoulder; but during the night slipped out again from some little motion. I do not think I ever knew that to happen, — to redislocate in a matter of twelve hours. That is a great deal in favor of the probability of his capsule being badly torn at that time. Four weeks later, under practically no provocation at all, by merely putting arm up to put on coat, his shoulder came out. The shoulder in usual dislocation would not come out, and you heard him say that he was lifting a chain, — he used undue amount of force with that arm. Then he testifies that in turning over in bed and pulling the clothes over him his arm comes out again, and he has done that the second time. To come down to my examination on Friday. He was sent to my office by the Springfield Hospital to decide whether he should stay there or not. I looked him over carefully and went into his history. The man has a very marked relaxation of the capsule. I almost put his shoulder out in the examination at my office. The question came in that he was sent up there and referred to me for operation on his shoulder. An operation for

a dislocation of the shoulder should not be undertaken until everything else has been tried and a long period of time elapsed, because it is probably as serious an operation on a joint which can be undertaken. I thought the man had not waited long enough to see whether the rent would heal or not. I told him not to have the operation for six months, and I would rather not have it for a year. I advised him to have his arm fairly tight, — he had on a shoulder cap which does not hold any shoulder. I advised him to give it that much play [illustrates with own arm], but to prevent himself from getting undue extension of his arm.

He undoubtedly has a rent in his capsule. It would probably be but six months' time before he would get so he would not throw it out very much; if he keeps it up for a year he can probably get along without an operation and get a fairly useful shoulder, but he ought to take that time before he subjects himself to an operation which may endanger his life. The results are not always successful. Of course there is danger of sepsis and of stiff joint. I have advised him to hold his arm for a long enough period to find out whether he could heal his joint or not, — it would be about a year. I think he could do quite a good many things if he could keep his arm tied down, — if he does not have to lift it up or back. I do not know whether he could shovel or not. If he keeps his arm tied up it is liable to stay in, and if it stays in long enough the chances are good that he will have a good shoulder without any operation, — the outcome is more or less problematical as to utility, and there is the risk of infection to every joint operation. I would strongly advise him to take his time before subjecting himself to it.

Dr. George C. Gates testified: that he attended Mr. Hughes on November 9 and December 13, and reduced the dislocation both times; that the last time he treated him for dislocation the shoulder was healed as much as it ever would be; that he would expect the shoulder to go out any time, and that he would be subjected to that trouble; that it is liable to happen anywhere and any time if he gets his arm in any peculiar position; that he would expect he would put it out with less provocation than a man who has a good shoulder.

We find, therefore, on the weight of the medical evidence, that this man, while in the employ of Olmstead & Tuttle Company, on Nov. 9, 1914, received a very severe dislocation of the shoulder. It was reduced and put in a sling, and that night a very unusual thing happened, — the shoulder dislocated itself while lying in bed. He apparently made a recovery, and returned to work, and on Sunday, Dec. 13, 1914, while getting ready to go home, in putting on his overcoat he

received another dislocation. We find that on the weight of the medical evidence, in a man of his years, that after a serious dislocation it is by no means uncommon, where there has been a rent in the capsule, for a slight movement to cause another dislocation. He was properly on the premises on Sunday, December 13, called there by his employment, and had been attending to his customary work, and but for the requirements of his work he would not have been there that day. It was in the winter time, when it was necessary for him to wear an overcoat, and we find that he was still acting in the course of his employment when he was putting on his overcoat to go home, which was an incident connected with his employment; that the dislocation of the shoulder arose out of and in the course of his employment; and that he is entitled to receive compensation during the period of his disability.

On the weight of the medical evidence this man has sustained a severe injury, — an injury which followed a dislocation received in the same employment on Nov. 9, 1914, which left the shoulder in such a condition that a very little thing was required to throw it out; that this condition still exists in his arm; that it will be necessary for him to keep his arm in a sling so as to prevent full use of the arm; that this is good medical treatment in order to secure a good working arm in the future. It appeared in evidence that the only alternative was a very serious operation which would endanger his life, and the results of which would be problematical, and he would be justified, and is justified, under the circumstances, in refusing to undergo such an operation, particularly in view of the present method of treatment, that is, the wearing of the sling which will keep the joint in place, and which, if worn for a long period, will eventually give him good recovery.

We find that he has been incapacitated from Dec. 13, 1914, up to the date of the hearing, said incapacity still existing; that he is entitled to reasonable medical treatment during the first fourteen days after the injury, counting the day of the injury as the first day; and that he is entitled to two-thirds of his average weekly wage, beginning the fifteenth day after the injury, viz., Dec. 27, 1914, up to March 30, 1915; that is, thirteen and three-sevenths weeks at $10 per week, total amount, $134.28.

The request for ruling by the insurer is refused.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

DUDLEY M. HOLMAN.
CHARLES L. YOUNG.

Thomas H. Kirkland dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, May 20, 1915, at 3 P.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that the employee, Bernard E. Hughes, received a personal injury arising out of and in the course of his employment on Nov. 9, 1914, by reason of which his right shoulder was severely dislocated. The employee returned to work, apparently having recovered to such an extent as to permit him to resume his usual occupation. Later, on Dec. 13, 1914, under practically no provocation, that is, while putting on his overcoat, the shoulder became dislocated again and the employee was incapacitated for work thereby. The medical evidence shows that, by reason of the dislocation of Nov. 9, 1914, the shoulder is likely to become dislocated again at any time, and that such dislocation is likely to happen anywhere and at any time, if the employee gets his arm into any peculiar position. The employee has a marked relaxation of the capsule of the shoulder, and an operation should not be undertaken, at least until after a period of six months or a year

under present treatment, as such an operation in the case of this employee may endanger his life. Present treatment probably will give the employee a fairly useful shoulder.

The Boards finds, upon all the evidence, that the employee is incapacitated for work by reason of conditions due to the injury of Nov. 9, 1914, from the effects of which he had not recovered at the time he was putting on his coat on Dec. 13, 1914, and which usual effort caused his shoulder to become redislocated; that the employee is not acting unreasonably, in view of the medical evidence, in declining to accept an operation at this time; that compensation is due the employee from Dec. 13, 1914, the date upon which total incapacity for work again recurred as a result of the previous injury on Nov. 9, 1914, to March 30, 1915, a period of fifteen and three-sevenths weeks, at the rate of $10 a week, in amount, $154.28; said weekly payments to be continued until this order is revised, after due hearing under Part III., section 12 of the act.

FRANK J. DONAHUE.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE NO. 1542.

ANDREW REARDON, *Employee.*
CAMBRIDGE PAPER BOX COMPANY, *Employer.*
TRAVELERS INSURANCE COMPANY, *Insurer.*

DURATION OF INCAPACITY. UNREASONABLE FAILURE TO COMPLY WITH MEDICAL ADVICE LENGTHENS INCAPACITY. AWARD OF PARTIAL COMPENSATION.

The employee fractured his leg on Jan. 8, 1913, and was paid compensation for total disability up to Nov. 18, 1914. The employee was advised by three impartial physicians that use of the leg would hasten recovery, but neglected to follow their advice. His own physician testified that he could do a certain amount of work.

Held, that when compensation was stopped he had an earning power of $7 a week.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Andrew Reardon *v.* Travelers Insurance Company, this being case No. 1542 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, Richard M. Walsh, representing the insurer, and Leo M. Harlow, representing the employee, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Cambridge, Mass., Wednesday, Feb. 10, 1915, at 10 A.M.

Stanley Bishop appeared as counsel for the employee, and L. C. Doyle appeared for the insurer.

The employee, Andrew Reardon, while in the employ of the Cambridge Paper Box Company on Jan. 8, 1913, sustained a fracture of the right leg below the knee, through a heavy case falling on it from a truck which he was wheeling. He had been paid compensation from Jan. 22, 1913, up to Nov. 18, 1914, at $6.50 a week, one-half of his average weekly wages.

The only question was as to the duration of incapacity for work.

The material evidence was as follows: —

Three impartial examinations of the injured employee had been made under section 8, Part III. of the act, — one by Dr. Francis D. Donoghue, one by the Massachusetts General Hospital, and one by Dr. L. R. G. Crandon. The latter also testified at the hearing. A report of each examination was sent to Reardon.

Dr. Francis D. Donoghue on Nov. 20, 1913, found a good result from the fracture, and advised the employee to attempt light work, stating that he would not be able to do his usual work for a considerable period of time.

The Massachusetts General Hospital reported on May 25, 1914, that the employee had a case of flat foot following a fracture of the tibia; that the fracture itself was not giving any trouble, and that treatment of the foot and use of the leg would give a good result.

Dr. L. R. G. Crandon at the time of the examination, Aug. 6, 1914, advised him to go to work, and told him that whether he worked then, or two years from then, there would be a period of weakness and pain to be endured at first. Reardon himself expressed the opinion to Dr. Crandon that he could work at something that did not involve standing. Dr. Crandon was of the opinion on August 6 that if he went to work then, the foot ought to be in good shape in two months.

Dr. Samuel H. Littlefield, examiner for the Travelers Insurance Company, testified that he had made two examinations of Reardon, — one on Oct. 1, 1913, and one on April 24, 1914. The latter examination showed that the employee had fallen arches to a mild extent, and the doctor advised orthopedic shoes. So far as the injury was concerned he then would have been able to work in about three weeks. He might suffer pain and discomfort for a while.

Dr. Daniel F. Mahoney, surgeon at the Carney Hospital, summoned by the employee, testified that he had examined Reardon on Dec. 14, 1914, when he found he had a decided limp, and shortening in the leg from one-half to three-quarters of an inch. He suffered from flat foot which would be helped to a considerable degree by wearing the proper shoes. He could do a certain amount of bench or desk work which would not require him to be on his feet a great deal.

The employee testified that the only effort he had made to secure work was in September, 1914, when he saw the superintendent of the Cambridge Paper Box Company, who told him that the work which he had been doing was too heavy for him, and besides, he had another man in his place. He was told that they would give him something to do, but that it would require constant standing, walking back and forth. He had not as yet given them any answer as to whether he would take this job. He had inquired of several friends to see if they knew of a position, but had not heard of anything. He did not think it was advisable to go and look for work while he had the lame leg, as he was not smart enough in getting around.

The evidence shows that the employee acted unreasonably in not making any endeavor to obtain and perform work which the incapacity due to the injury would not have pre-

vented him from performing. He has been able for a period of many months to perform general light work, and was so advised by the impartial physicians appointed under Part III., section 8 of the act. Notwithstanding the verbal and written opinion of the impartial examiners, and the expressed belief by the employee that he could perform work that did not involve continued standing, no reasonable attempt was made by him to obtain any kind of work, and compensation was stopped by the insurer on Nov. 18, 1914.

The employee acted unreasonably in not complying with the suggestions made by each of the three impartial examiners, — that he should use the injured member, — and failed to do his part towards bringing about a full recovery by not seeking to obtain the employment which would hasten such recovery. It was as much a part of the duty of this employee to make effective the advice and instruction of the examining physicians, thus contributing his share to the restoration of the injured foot to its normal function, as it was the duty of the insurer to pay the compensation due under the statute on account of the incapacity for work incurred by reason of such injury. Failing to act reasonably in this respect, at least a share of the burden for the resulting incapacity occurring because of this neglect must be borne by the employee.

The committee of arbitration therefore finds, upon all the evidence, that had the employee, Andrew Reardon, acted reasonably and made diligent effort to find suitable employment, his average weekly wages on Nov. 18, 1914, the date upon which compensation was suspended by the insurer, would have been $7, and it so finds.

The employee, therefore, is entitled to a weekly compensation of one-half of the difference between the average weekly wages earned by him at the time of the injury, $13, and the average weekly wages of $7 which he was able to earn at the time when compensation was suspended; that is, the payment of a weekly sum of $3 up to March 20, 1915, when, the committee believes, that if the employee follows the advice given him by the impartial physicians, all incapacity due to the injury will have ceased. The employee or the insurer may then, or prior to that time, come before the Industrial Accident

Board, under Part III., section 12, and ask for a revision of this order in accordance with the facts as they may be at the time of such hearing as to the disability of the employee, Andrew Reardon, to earn wages.

This decision is subject to revision under the section above referred to, and if the Board finds that the earning capacity of the employee at the time of review is more or less than the average weekly wage herein given, $7, an adjustment in accordance with the Board's finding shall be made by the parties.

FRANK J. DONAHUE.
RICHARD M. WALSH.

Leo M. Harlow dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, March 25, 1915, at 11 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that the employee, Andrew Reardon, acted unreasonably in not making any effort to obtain and perform work which the incapacity due to the injury would not have prevented him from performing. He has been able for a period of many months to perform general light work, but, notwithstanding the verbal and written opinion of the impartial examining physicians, and his own belief that he could perform work that did not involve continued standing, no reasonable attempt was made by him to obtain any kind of work, and compensation was stopped by the insurer on Nov. 18, 1914.

The Industrial Accident Board finds, upon all the evidence, that the employee, Andrew Reardon, is entitled to a weekly compensation of $3 from Nov. 18, 1914, to March 20, 1915,

in accordance with the findings of the committee of arbitration, the total due under this decision being $52.28.

The Board expressly reserves to the employee the right to be heard under Part III., section 12, upon an application for a revision of the weekly compensation in accordance with his ability to earn wages since March 20, 1915.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE NO. 1550.

MRS. DANIEL FERRIE, WIDOW OF DANIEL FERRIE, *Employee.*
B. F. STURTEVANT COMPANY, *Employer.*
AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DEATH RESULTS FROM THE INJURY. DISEASE. CHAIN OF CAUSATION. EMPLOYEE SUSTAINS SPRAIN OF THE BACK. DEATH OCCURS FROM HYPOSTATIC PNEUMONIA TEN MONTHS LATER. NO RELATION BETWEEN INJURY AND DISEASE.

The employee sustained a personal injury, which arose out of his employment by reason of sprain of the back, on Feb. 1, 1914. He died from hypostatic pneumonia on Oct. 18, 1914. The immediate effects of the injury were confined to the sprained back of the workman, and the later conditions, the changes in the arteries, the bronchitis, the general debility, and his death from hypostatic pneumonia, were not the natural results of such injury.

Held, that there was no causal relation between the injury and death.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Mrs. Daniel Ferrie, widow of Daniel Ferrie, *v.* American Mutual Liability Insurance Company, this being case No. 1550 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, representing the Industrial Accident Board, chairman, Martin Joyce, representing the widow, and C. Henry Poor, Jr., representing the insurer, heard the parties and their witnesses at the Board Room, New Albion Building, Boston, Mass., on Wednesday, March 17, 1915, at 10 A.M.

The claim of the employee for compensation, prior to his demise, was heard by a committee of arbitration on Oct. 14, 1914, and it was then held, on all the evidence, that all incapacity for work as a result of the injury of Feb. 1, 1914, the date upon which the employee was injured, ceased on or about June 24, 1914. After the death of the employee occurred, his widow, Mrs. Daniel Ferrie, filed a separate claim, asking for compensation on account of his death.

The following is the material evidence presented to the committee of arbitration, in connection with the claim of the widow for compensation: —

Dr. Charles Malone, the attending physician, testified that he had diagnosed the cause of death as hypostatic pneumonia, superinduced by long confinement in bed. The rupture was the main injury, and as a result of that and the sprain of the back the employee was not able to work, and was later confined to the bed, as a result of which he developed inflammation of both lungs, causing hypostatic pneumonia, of which he died. He gave the history of the case, as given previously, calling special attention to the fact that the employee had worked steadily for thirty years without losing a day or having a physician before. He had diagnosed the case as one of hypostatic pneumonia from three or four days to a week before the death occurred, and in his opinion the remote cause of death was the injury received eight months ago; the rupture and sprain of the back resulted in a nervous breakdown, when he could not work and was confined to his bed, and hypostatic pneumonia subsequently developed. In his opinion the employee would be alive to-day were it not for the primary injury. He had found no disease, except some arterial sclerosis, a condition of people of the age of the employee. The bronchitis was not chronic; it cleared up afterwards. The patient had a little indigestion, upset of the stomach, no doubt caused

by lying in bed for months. He had worked for three weeks after the injury, and as a result of trying to work he was in bad physical shape when he was seen by the doctor; he did not take to bed for some time afterwards; he grew weaker all the time.

Dr. Frederic J. Cotton testified that when he first examined the employee on August 24 he was obviously much depressed in health; he was "all in" so far as strength was concerned. He had at that time acute bronchitis. The doctor assumed that underlying that was a chronic bronchitis that is found in a man of his age who had worked hard and was beginning to "crumple up;" at that time the employee did not complain of the hernia at all, but of his back. He did not examine him for hernia, but he did later, when he heard there was complaint of hernia; the employee at this examination did not mention the hernia until he was asked directly about it, when he said it did not trouble him much. The doctor asked about a truss, which he was not wearing at the time; he said he wore it occasionally. It was the doctor's opinion that the hernia did not occupy a position in the forefront of his mind or had caused much suffering; it did not seem important. He could not see that either the sprain of the back or the hernia would account for his condition; he had lost a tremendous amount of weight, — 70 pounds; there was some probability that he had had gastritis; there was no direct evidence of that, simply the history. There was no question that he showed signs of wear in heart and arteries; there was no question of bronchitis. The doctor questioned whether there was any tuberculosis, but he could not find it; he did not think anybody could be sure whether terminal pneumonia was tuberculosis or not. In a man of that type, getting towards the stage of break-up, if he is laid up for any length of time it has some effect on his general health; it knocks him out. It was the doctor's opinion that he was a man who went to pieces; it was a medical condition that followed an injury of comparatively slight gravity. As to the connection between those two things, there is nothing that can be proved. It comes down to a question of common opinion; pretty nearly a guess. The man could not work, and the medical condition supervened. He could not see how

the medical condition had anything to do with the accident. Obviously, hypostatic pneumonia does come from a man lying on his back in a feeble condition; it would not come to any of us through lying on the back, but it does come in old and feeble individuals lying on the back. It is a question of what laid him on his back. The hernia did not get him on his back direct. It is pretty hard to see any connection between the hernia and the original breaking up which happened over six months after the accident; of course, these are sequences in time; whether there were sequences in cause or not it would be difficult to find. That type of man, from the point of view of work, has come pretty near the end of his life work at that age, and is by no means to be regarded as a sound average individual. Terminal pneumonia is the final chapter in the history of other disease or weakness; it may be a hypostatic pneumonia or a lobar pneumonia, or, in a considerable majority of cases bronchial pneumonia of hypostatic type; either may carry a man off quickly, maybe in a number of days.

Dr. William H. Bennett testified, regarding the condition of the employee at the time of his examination on June 8, 1914, and stated as his opinion that he should feel very doubtful as to whether or not the hernia was caused by the accident. The arterial sclerosis or the bronchitis was not brought about by the accident. The employee complained of a lame back, which showed some symptoms of rigidity of the lumbar muscles; the doctor had noted that he had lumbago, which could have been an adequate cause of the condition of his back at that time. A strain of the back, in an ordinary man, should not lay him up for more than three months at the longest. In the doctor's opinion, this was the case of a man of sixty-two years of age, who had worked hard all his life, and possibly had not taken the best care of himself; his arteries had become hardened; he had bronchitis; the doctor was suspicious of tuberculosis, which his rapid loss of weight and general debilitated condition would seem to indicate. Taking these things into account, and in view of the fact that his death resulted from hypostatic pneumonia, it would be hard to connect it with any injury he might have had. As to these things being caused by continued lying in

bed, the doctor said he could not see how the injury would keep the employee in bed; it was not severe enough; his general debilitated condition might have kept him in bed. Up to June 8 he had been in bed only three weeks. He did not consider at that time that the strain of the back had any effect upon the condition of the employee. Arterial sclerosis is one of the causes of hypostatic pneumonia; a great many old people who are said to die of old age die of hypostatic pneumonia; it is the pneumonia of old age. It was the doctor's opinion that the injury had nothing to do with the employee's general physical condition. He may have had the rupture for years. He was an old man, whose muscles were weak and flabby; the abdominal ring was large and flabby, and almost anything would bring down a rupture under those conditions. "Keen Surgery" says that a rupture produced by intra-abdominal pressure will lay a man up within forty-eight hours, that is, he will discover it and seek advice within that time. Trauma cannot cause hernia; it must be produced by intra-abdominal pressure. In a minor number of cases it can be due to lifting heavy weights, causing the holding in of the breath, which causes such pressure; if that pressure is great enough to bring down a hernia it will bring it down immediately; it will not keep off for three or four weeks.

Dr. Francis D. Donoghue, after examining the evidence in the case, at the request of the committee of arbitration, testified that in his opinion there is no relation between the accidental happening of February and the death in October. This man had approached the end of his working days, and met with a severe strain of the back. The immediate effects were confined to the back. Later he was found with the changes in his arteries, bronchitis, a hernia or rupture and general debility. To the doctor's mind, none of these conditions were the natural results of a strain of the back, unless possibly the hernia, and of that he has great doubt. It is probable that all these conditions existed at the time he met with his accident in February, and that by reason of these conditions his disability was prolonged longer, the strain of the back not clearing up as it would in a younger or more vigorous man. Aside from that, the conditions of treating the strain in the

back would be the conditions that would allow the disability that came from his hernia a chance to quiet down, if it caused any disability. The only thing that seemed to him chargeable to that accident was a sprained back, with a longer period of disability than one would otherwise have. The accident was not of such a character, either in the amount of violence exerted locally, or in the strain that was put on the general system, as to aggravate the older conditions or to shorten the man's life by reason of such aggravation. Assuming that he got the hernia from the accident and the sprained back, the doctor did not think there was enough in these two things to make him lie in bed to the extent that it brought on hypostatic pneumonia. If a person has recognized weak circulation, arterial sclerosis, weak heart and signs of general debility, such things would keep him in bed apart from sprained back and hernia. Hypostatic pneumonia in the end results in a failing circulation, whether a man has an accident or not; it is not a disease of itself. The fact that a man lies in bed is because he cannot get up or is advised to stay there. If a man gets a strain which results in hernia, he gets immediate and sudden pain which is disabling, as a rule, and would be more suggestive or painful than the sprained back, and would have been such as to have been called to somebody's attention immediately. A man with a sprained back may work with it; he may go on a considerable period and then give out by reason of the deficiency of the back. If the strained back does anything to a man suffering with a circulatory system in the general state of debility this man had he would have had the immediate and most severe effects at once, and they would have been continuous from the time he got his hurt. In a man suffering as he did, and having a severe injury as the result of lifting, which was reflected on his general circulatory system, as represented by his heart and blood vessels, it would not be surprising if he died immediately as a result. There is no such thing as delayed shock; a man cannot get such a shock to the nervous system and then fade out months later as a result.

The committee of arbitration which heard the claim of the employee for compensation, prior to his demise, summarized the evidence offered before it as follows: —

From the evidence it appears that the employee probably sustained a sprain of the back while lifting in the course of his employment. Later he was found to be suffering with changes in his arteries, bronchitis, hernia and general debility. None of these conditions are natural results of a strain of the back, unless possibly hernia. Even if the hernia could be directly attributed to the accident, were it not for the other conditions he would be able, with a truss, to do considerable, if not all the amount, of the work that a man of his age could perform. It is probable that these other conditions existed at the time of the accident, and the unusual occurrence attracted attention to them, but the accident is not to be charged to them. They had, however, the effect of prolonging the effects of an injury which should in a man in good condition quickly respond to treatment. It does not appear that the accident was of such a character as to aggravate the older conditions, while as a matter of fact the treatment accorded the back would tend to have a favorable influence on them.

The claim of the widow may be summarized in the statement of the attending physician, Dr. Charles Malone, that the hypostatic pneumonia which caused the employee's death was the result of conditions which had been superinduced by long confinement in bed as a result of his personal injury of Feb. 1, 1914.

The weight of the medical evidence showed, however, that the sprain or hernia, or conditions resulting from the injury, had no causal relation to the medical condition of the employee subsequent thereto. Hypostatic pneumonia often comes to old and feeble persons who are compelled to remain on their backs in bed, but there is no connection of cause and effect between the injury and the original breaking up of the employee. Hypostatic pneumonia usually is the final result of a failing circulation, whether a man has an accident or not, and is not of itself a disease. If the strained back had any effect upon this employee it would have shown itself promptly; there would have been immediate and most severe effects at once, and they would have been continuous from the time of the injury. That this was not so in the present instance was shown by the fact that the employee, as shown by the evidence at the original hearing in October, 1914, did not leave his

employment until about three weeks after the injury, that is, on Feb. 19, 1914. The terminal or hypostatic pneumonia, from which the employee died, was the final chapter in the history of disease from which the employee was suffering. The immediate effects of the injury were confined to the strained back of the workman, and the later conditions, the changes in the arteries, the bronchitis, the general debility were not the natural results thereof. It could not be said that the employee's condition had been materially accelerated or aggravated by reason of the injury, and the committee of arbitration, which passed upon the claim of the employee, prior to his demise, decided that all incapacity as a result of the injury had ceased on or about June 24, 1914.

The committee of arbitration finds, upon all the evidence, that the death of the employee, Daniel Ferrie, on Oct. 18, 1914, from hypostatic pneumonia, had no causal relation to the personal injury received by him on Feb. 1, 1914, and therefore that no compensation is due the widow under the Workmen's Compensation Act.

JOSEPH A. PARKS.
MARTIN T. JOYCE.
C. HENRY POOR, Jr.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, April 29, 1915, at 11.30 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that all incapacity for work resulting from the injury ceased on June 24, 1914, and that there was no causal relation between the death of the employee, from hypostatic pneumonia on Oct. 18, 1914, and the sprain of the back received by him on Feb. 1, 1914.

The Industrial Accident Board finds, upon all the evidence, that there was no causal connection between the personal injury received by the employee on Feb. 1, 1914, and his death from hypostatic pneumonia on Oct. 18, 1914. Therefore the claim for compensation by the widow is dismissed.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE NO. 1554.

THOMAS J. COOGAN, *Employee.*
L. P. PAGE & CO., *Employer.*
FIDELITY AND CASUALTY COMPANY OF NEW YORK, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. ADDED RISK OF INJURY. EMPLOYEE ADDS UNNECESSARILY TO HIS RISK OF PERSONAL INJURY BY RIDING UPON AN AUTOMOBILE TRUCK. WHEN NEARING HIS PLACE OF EMPLOYMENT, AND WHILE THE TRUCK WAS IN MOTION, HE ALIGHTED AND WAS INJURED. CLAIM DISMISSED.

The employee, a plumber, was sent by his employer to perform work at a house a mile or more away. It was the custom generally to furnish him with street-car fare, and if he was not given such car fare in advance he collected it after returning from the job. On the day of the injury he had finished the work and was returning to the shop to make certain changes in the material which would be required. When he reached the street he saw an automobile truck coming along and secured permission to board it. When the truck was nearing the shop of his employer he got upon his feet, took hold of a stake fastened to the truck, and swung to the ground while the automobile was proceeding at a speed of from 2½ to five miles an hour. He slipped under the wheels of the truck and was seriously injured.

Held, that the injury did not arise out of the employment.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Thomas J.

Coogan *v.* Fidelity and Casualty Company of New York, this being case No. 1554 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Frank A. Lynch, representing the employee, and William V. Baldwin, representing the insurer, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, 423 Main Street, Springfield, Mass., on Tuesday, March 9, 1915, at 9.30 A.M.

Edward Hutchins appeared as counsel for the insurer, and F. P. Squire appeared as counsel for the employee.

It was agreed that Thomas J. Coogan was employed by L. P. Page & Co., and that L. P. Page & Co. were insured by the Fidelity and Casualty Company of New York under the Workmen's Compensation Act, and that his average weekly wages were $18. The question at issue was whether the accident arose out of the employment.

It appeared in evidence that the employee was working as a plumber at a house a mile or more away from his employer's store; that he was generally furnished with street-car fare when on these jobs away from the store, or, if he was not given car fare in advance, he collected it after returning from the job. On the day in question he had finished the work as far as he could without returning to the shop to make some changes in some of the material to be used. It was about 4 o'clock in the afternoon, and he thought that it might be possible for him to make the alterations and return and finish up the job that night. When he got out on the street he saw an automobile truck coming along belonging to the water department of the city of Springfield, and by a sign to them he secured permission to board the automobile, intending to return to the store in this way. The automobile slowed down sufficiently to allow him to get on board, and he was asked to sit up on a seat at the front of the vehicle. The floor of the truck was about 3 feet 10 inches from the ground. When nearing the store he got on his feet and took hold of a stake fastened to the truck and swung to the ground while the truck was going at the rate stated, — between 2½ and 5 miles an

hour. He landed on his feet on the ground, turned one ankle, apparently, and slipped under the wheels of the automobile, receiving a broken pelvis bone, serious bruises about the hips and several other minor injuries. The accident happened between ten minutes and quarter past 4 in the afternoon. He was taken into his employer's store in front of which the accident happened, was removed to his home and later taken to the hospital for treatment.

Thomas J. Coogan testified that if he found he could not complete the job that night he would complete it in the morning, which would require him getting up earlier than usual because he was engaged to go to Palmer for a job there, and he was trying to get to his employer's place of business as soon as possible in order that he might have time to finish the work that night.

These are all the material facts in the case. There is no question that the accident arose in the course of the man's employment. He was on his way, as he had a right to be, from a place where he was working to his employer's store, and his hours of labor had not been completed.

We find that the workman cannot increase the responsibility of the employer under this act by doing something which is not necessary for the proper discharge of his duties; that his employer had no control over this automobile; that he was not instructed by his employer to use any such conveyance; and that he exposed himself to a risk which cannot fairly be said to be incidental to his employment; therefore we find that his injuries do not arise out of his employment, and that he is not entitled to recover compensation.

DUDLEY M. HOLMAN.
WILLIAM V. BALDWIN.

Frank A. Lynch dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, June 3, 1915, at 2.45 P.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows and the Board finds that the employee, Thomas J. Coogan, unnecessarily added to his risk of personal injury by seeking and obtaining permission to ride upon an automobile delivery truck, and that, by reason of such unnecessarily added risk, he received a personal injury while alighting from the truck as it proceeded along the highway near his place of employment at the rate of from 2½ to 5 miles per hour. The resulting personal injury did not arise out of and in the course of the employment of the claimant, Thomas J. Coogan, and no compensation is due him under the statute.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1556.

EDNA MAY HARBROE, WIDOW OF WILLIAM A. HARBROE, *Employee.*

FURST-CLARK CONSTRUCTION COMPANY, *Employer.*

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DEATH RESULTS FROM THE INJURY. SCOPE OF THE EMPLOYMENT. NIGHT WATCHMAN FATALLY INJURED BY OFFICERS OF THE LAW. YEGGMEN HAD COMMITTED BURGLARY ELSEWHERE. SHOOTING OF WATCHMAN DUE TO UNFORTUNATE MISAPPREHENSION ON PART OF OFFICERS. RESULTING FATALITY CANNOT REASONABLY BE SAID TO HAVE HAD ITS ORIGIN IN A HAZARD CONNECTED WITH THE EMPLOYMENT.

The record shows that yeggmen had committed burglary in the town, and that officers of the law were endeavoring to apprehend them. By reason of an unfortunate misapprehension these officers shot and killed the decedent, a night watchman in the employ of the subscriber. There was no evidence that the subscriber's property ever had been injured by wrongdoers, or that from its

character or location it was especially exposed to theft or harm at the hands of trespassers. At the time of the shooting the property was in no way threatened, nor did the decedent think that it was. He was not fired upon because he was the watchman in charge, but rather because he was mistaken for one of the burglars.

Held, that the fatality arose out of the employment.

Review before the Industrial Accident Board.

Decision. — Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appeal to the Supreme Judicial Court.

Decision. — Findings of Board reversed; the court held that the fatality did not arise out of the employment.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Edna May Harbroe, widow of William A. Harbroe, *v.* Fidelity and Deposit Company of Maryland, this being case No. 1556 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Thomas F. Boyle of the Industrial Accident Board, chairman, Moses C. Waterhouse, representing the widow, and James Thomas Pugh, representing the insurer, heard the parties and their witnesses in the Selectmen's Room, Town Hall, Bourne, Mass., on Tuesday, March 9, 1915, at 10 A.M.

Charles Sumner Morrill appeared for the widow, and Albin L. Richards appeared for the insurer, as counsel.

On Oct. 9, 1914, William A. Harbroe was mistaken for a burglar and shot by the sheriff.

The question at issue in this case is whether or not the injury arose out of and in the course of his employment.

The material evidence was substantially as follows: —

Dr. Henry C. B. Snow, a practicing physician and surgeon of Bourne and Buzzards Bay, testified: —

I was called October 9 by telephone about 3 o'clock in the morning. I found the patient at the operator's house on the Buzzards Bay railroad bridge, lying on the floor and conscious. He was suffering some pain and had difficult respiration. The injury was in the lower part of the abdomen on the right side, and was caused by a gunshot. There was very little external hemorrhage. There was no opening at the back, which showed that the bullet was still in the body. I gave the patient a stimulant and also something to ease the pain. From the location of the wound, the bullet

must have penetrated the intestines. I simply had the ordinary conversation with him as regards the amount of pain. I did not ask him any questions, but Mr. Hart was asking some. It was impossible to say whether he would survive. He had a slight chance at the time I first saw him. Dr. Curry and I concurred in the opinion that he should go to the hospital, because an operation was required. To probe the wound would have been the wrong thing to do.

Burnside R. Value testified: —

In the summer and fall of 1914 I was living at Buzzards Bay, and was a contractor's superintendent for the Furst-Clark Construction Company there. I employed Mr. Harbroe, for the Furst-Clark Construction Company, in the spring of 1914. He had been working about five months at the time of the accident, and his salary was $14 a week. I hired him as a night watchman. His hours were from 6 o'clock in the evening to 6 o'clock in the morning. His duties were to watch all the shore plant of the company at Buzzards Bay. I was his boss. He was supposed to watch the office and bunk house on the east side of the track. He had to watch any floating plant tied up at the wharf if there were no men on board. Immediately back of the office building is the bunk house. This bunk house was not occupied at the time of the accident. On this side of the track there were machine parts and lumber which he had to watch. There were some more buildings further over, immediately east of the office. His duties took him across the tracks to the west side. The machine shop is on the west side of the track. In this shop are tools and machinery. At this time the machine shop was an open building with sliding doors and no locks. He had to go over there to see the boilers. The boiler shop is on the west side of the track. There are also four or five buildings on this west side, used as storehouses, that he had to watch. Only one of these buildings had a lock. On the north side of the river, on the west side of the track, there was a lot of repair parts of all kinds in the yard. There was also a dock there that had material on it, practically parallel with the railroad. He had to watch any of the dredges, scows of any description, or tug boats that had no crew or watchman on board. There is a pumping station on the south side of the river which does not show on the plan and which is across the railroad bridge. He had to watch to see that no one took anything, and also watch the boiler at night. He was to make a round of these places every hour. I told him to watch all the plant, and that would necessitate his going across the tracks. I always found Mr. Harbroe a very efficient, sober man, and conscientious in his duties. He never lost a day's work for any reason during the time I had him employed.

The operator's house is on the bridge near the edge of the draw. It does not belong to our company, and Harbroe had nothing to do with the operator's house, but he had to cross the bridge to watch the house on

the other side. I gave him no instructions about the operator's house. I had no absolute proof that the watchman carried firearms. I told him to watch the job, and the way he did it was his responsibility. I have on several occasions noticed some suspicious characters around, and told Harbroe about it, and told him to watch out for them. This was not immediately before the accident, but not longer than two weeks before. I regarded him as being on our property and in the discharge of his duties when going across the tracks to watch our property.

Harvey L. Hart, deputy sheriff of the county of Barnstable, testified: —

On Oct. 9, 1914, I was living in Buzzards Bay. I never saw Mr. Harbroe before October 9. On October 9 I received a telephone call from the operator in the telephone exchange at Bourne, saying that the safe at the post office in Bourne had been blown open by yeggs, and that Mr. Bourne, the selectman, wanted me to get busy right away. It was about twenty minutes past 3 in the morning. My brother, William Hart, was there at the time and I awoke him and hastily dressed. I went down to the store where my revolvers were, gave one to my brother, put my own in my belt, and then the telephone rang again. It was the operator again, and he said that Mr. Trench wanted to talk with me. Mr. Trench was the operator on the drawbridge that goes across the canal. I think the railroad and the canal company employ this operator jointly. Trench told me that the two men had just crossed the bridge and he thought they were the yeggs. They were coming along towards Boston from Bourne, and he said if I went across to the station I could head them off. I said we were ready to go then. So we went out the back door, over a fence and down through a field. We waited five or six minutes, and no one showed up and it was very foggy. We proceeded down these tracks, going towards Bourne, in the direction from where Trench had telephoned from the bridge. We got to the switch, above the office building, towards Buzzards Bay station, when we heard two people talking in a low tone at that building. We came cautiously along to a point where the wide side track joins the main line. We could just make out two persons near this building, and my brother said, "There they are now," so we walked over the switch in an easterly direction, back of this building. We got to the office building, but the two men had gone. There is a building back of the office, and we came through this passageway. The two men, yeggs as I supposed, were just going up the embankment, going towards the machine shop. I said, "I am an officer, hands up," and the reply I got was "bang," and they all started shooting. They had gone up the embankment. We began to shoot back and forth a number of times, and I remember Mr. Harbroe dropping and the other fellow running, and I shot after him until my revolver clicked. Mr. Trench fired first. Mr. Trench had a shotgun, and the flame from the first flash

I saw was too long for a revolver. Harbroe fell once and got up and went about 10 feet before he fell again. He was picked up about 25 or 30 feet away from the machine shop, and 75 or 100 feet away from the building called the office. He was going from the office building to the machine building. I then went up and started to load my revolver and came to the point where Mr. Harbroe fell. He said, "It is a mistake. I am the watchman." He was in awful pain. I ran for a doctor and left my brother with him. My brother had taken him from where he fell to the operator's house on the bridge when I returned with the doctor. I met Mr. Bourne, the selectman, and told him what had happened. When I went back to the operator's house I said to Harbroe, "Didn't you hear me say 'I am an officer, hands up'?" and he said, "I did not hear you say you were an officer. I heard you say 'hands up.' If you said you were an officer I do not doubt your words, perhaps you did." I said, "How did you come to fire?" and he said, "Allie [meaning Mr. Trench] came over to the office and said two yeggs had come across the bridge and that he had telephoned to you. We came out of the office and Allie said, 'You had better come out of there, it is a bad place,' and we saw you come down here and that is the reason we came out of there. Allie said, 'Mr. Hart has turned the yeggs back and there the yeggs are coming now.'" He thought we were the yeggs. I asked him who shot first and he said, "Allie, and then I fired." I sent for Dr. Snow and Dr. Curry. The doctors sent him to St. Luke's Hospital in New Bedford. We telephoned over and had Dr. Kirby ready to operate on him. The wound was in the abdomen on the right-hand side. I went to the hospital with Mr. Harbroe. He died about 8 o'clock on the morning of October 9. I could not say whether Mr. Harbroe fired before me or my brother. I do not know how many shots I heard before I fired, but I think more than one, perhaps two or three. I would not say. I just remember one gunshot. So far as I know, these railroad tracks are the right of way of the New Haven Railroad. It seemed to me that they had reached the track and were moving in the direction of the machine shop. I did not have any talk with Mr. Harbroe as to what he was doing at the time I discovered him. After I got up to him and told him what my name was he said, "It was a mistake." The mistake was that we took them for yeggs and they took us for yeggs.

Albert L. Trench, bridge operator at Buzzards Bay, testified: —

I work for the New York, New Haven & Hartford Railroad and for the Cape Cod Construction Company. My station is at the edge of the draw on the western edge of the bridge. I remember this accident, it was on Oct. 9, 1914. It was in the morning, I do not remember the time, when I was called by the telephone, and I think it was "Central," and he said that Mr. Bourne wanted me to look out and see who went across the bridge, because the Bourne Post Office had been blown. Shortly after

that I saw two men coming and saw them very close to the house. They were coming from Bourne and going towards Boston. I watched them go by and then called "Central," and told him that two men had just crossed and he connected me with Mr. Hart. I told him about it, and said if he went out immediately he would just about meet them at Buzzards Bay depot. I waited quite a few minutes and then I went over to see Mr. Harbroe. I saw him standing in the Furst-Clark Company's office. He opened the door, and I asked him if he had had a telephone call, and he said he had not. He asked what was up and I told him. We stood out in front of the office talking about this matter, and also about a tug boat that went through, called the "Mercury" of Boston. Finally, I said, "I guess I will go up on the bridge," and I turned to go away and got about 10 feet to the southwest of the office building when I looked up on the track and there I saw two forms up there in the fog. I stopped immediately, and I said to Mr. Harbroe, who was in the doorway, "There are those fellows now. I guess they met Mr. Hart and got scared and are coming back," and we stood there and watched them. Mr. Harbroe came out from the office beside me. Finally they started in a sort of scrooched position to the eastward, across the tracks, down to the back of the building, and I said to Mr. Harbroe, "I think you had better get out of here. They are coming here to hide and will go over to get aboard the freight train," which was making up in the northeast part of the yard. He said, "Well, it is not a very good place to be alone," and I said, "No, it isn't." The dog was there and he asked if he had better take the dog, and I said, "No." So he put the dog into the office and locked the door. He made no reply to my statement about my going back to the bridge, so we started walking up a sort of beaten path that lies in a direction from the office a little to the south of the machine shop. The top of the path is about 30 or 35 feet from the machine shop. I started in the first place for my operating house on the bridge, but I did not know whether he would come all the way or not with me. We had no understanding, any more than that I told him I thought he had better get out of there. All at once we heard, "Hands up!" and we both stopped, and immediately after I turned around and saw two men. They were down the bank towards the office, and I then lost sight of one of them. It was very foggy, and the ground at that time was dark. Without any warning there was a flash from this dark hole, as I called it, down below this bank, east of the railroad track. I had a shotgun and I immediately shot. In the meantime, the gentleman I could see immediately started to fire. I did not see the gentleman who fired the first shot fire again. The man who fired the first shot was not the man in the path. After I had shot off I had nothing more to defend myself with, and, of course, I naturally supposed I was against burglars, and as I turned to run I saw Mr. Harbroe fall. As near as I can remember it, I should say he fell somewhere about 7 or 8 feet from the railroad track of the main line, towards the office. He picked himself up and started to run with me, and fell between the first two rails on the main line, and when he fell he said, "Oh, blood!" and

those were the last words I heard the man say. I started to run across the bridge to the south. I thought I would go into my house on the bridge and bar my doors, and as I ran I thought that if they really insisted on going across the bridge they were coming to put me out of commission, so instead of stopping I ran on. There was shooting going on even after I had landed on the bridge, — one or two shots were fired. I reached the house, to the south of the canal, owned by Mr. Mayo, and asked if they would let me in, and told them that some one had killed Mr. Harbroe.

The beaten path is an irregular path, not exactly straight. It leans more to westward as it goes up the bank. There is a space of about 14 feet from the upper edge of the bank to the eastern railroad track, and we were about halfway there. The man was shot while on the bank, about 7 or 8 feet before you get to the railroad track. I do not know whether the canal company or the railroad owns the bank, but I understand that the canal company owns it. [Mr. Richards objects.] I do not remember that I suggested going to my house on the bridge. I know I did suggest he leave there because I did not think it was safe for him. An agent from the insurance company called the day after the accident, and he read over the statement to me which he had written, and I took his honesty and signed it. He did not write the statement just the way I said it. I did not object to it as he read it, so I signed it. I did not read this afterwards. I did not hear the sheriff say, "I am an officer." If Harbroe was going over to the machine shop that night he would not cross any sooner than he did. He would take the same path that he did.

Benjamin F. Bourne, selectman of the town of Bourne and county commissioner of Barnstable County, testified: —

I had known Mr. Harbroe four or five years. In October, on the day of the accident, I was awakened about 2 o'clock in the morning by a telephone call, saying that the post office at Bourne had been entered and the safe had just been blown. I told the operator to notify Mr. Hart, and I started to dress. I went back again and gave orders to the operator to notify the men on each one of the bridges to keep a watch for any one coming over. I also gave other orders. I slipped a revolver in my pocket and took a double-barreled shotgun. My first stop was at the Buzzards Bay Post Office, and I noticed that nobody had entered that. I went into the house at the railroad and told the man in charge to notify all trains going out to be on the lookout. While I was talking with him there were loud shots. I rushed out and heard somebody on the bridge talking, so I hastened on and met Mr. Hart, and asked him if anybody had been shot. I think he told me that the man in charge had been shot. He told me that he said, "I am an officer, throw up your hands," and they shot at him. I asked where the man was, and he said at the bridge house, and I went on and found it was Harbroe. He called me by name. I asked him how it happened, and he told me that some one told him to throw up his hands. I asked him if they said anything else, and he said he did

not know. I asked what happened then, and he said, "Mr. Trench fired and then we all fired." I said, "Did Mr. Trench fire first," and he said, "He did." Dr. Snow came first and then Dr. Curry came, and told me to go ahead and make preparations to go to New Bedford. So I hastened and helped Mr. Linnell prepare his machine for the trip. At that time I wanted to tell his wife, but Mr. Harbroe did not want me to. He said he thought he was going to get along all right. Mr. Harbroe did not tell me what he tried to do after he heard the yeggs were on the premises.

William M. Hart, brother of Harvey L. Hart, testified: —

I was at my brother's on Oct. 9, 1914, and was in an adjoining room, and he came to me and told me that the Bourne Post Office was broken into and to get right up quick. I hurriedly dressed, went downstairs and he got two revolvers, and we went out through the back door, over across the adjoining lots, out to Franklin Hall, and then down the track until we got to the station. He went up one side of the railroad track and I went up the other side. Then we came together and got to the switch and stayed there for a minute, and we could hear voices down at the office building, so we went down. By the time we got down to the building the men had left their position and were up on the embankment, going upon the track way, and my brother sang out as loud as he could, "I am an officer, hands up," and the next thing I heard was bang, bang, and saw a very bright flash. It was a very foggy morning, — you could not distinguish anything 20 feet away. I think my brother answered the fire and fired several shots before I started to fire. I fired after Mr. Trench as he was going over the bridge. I did not see Mr. Harbroe when he fell the first time. The place where he fell the second time is where I picked him up. I asked Harbroe what made him fire on us when my brother sang out, "I am an officer, hands up." He said, "Trench fired first, and what made me fire, I do not know." I do not know whether they were on the bank or on the tracks; they were up in that direction. That night was the first time I had ever seen Mr. Harbroe.

Edna May Harbroe, widow of William A. Harbroe, testified: —

I was married at Somerville, Mass., in July, 1909, by Dr. Martin, Baptist minister of Somerville. At the time of my marriage I was a resident of Somerville, and my husband was a resident of Cambridge. I have lived continuously with my husband from the time I was married.

Sarah J. Perry, mother of Edna May Harbroe, testified: —

My daughter was the wife of William A. Harbroe and was married to him on July 7, 1909, by Dr. Martin, Baptist minister of Somerville. They had always lived together from the time they were married, and were living together at the time of the accident.

During the hearing the committee of arbitration viewed the scene of the accident and the grounds over which Mr. Harbroe acted as night watchman.

The evidence shows that Harbroe was employed by the Furst-Clark Construction Company to work as a watchman from 6 P.M. to 6 A.M. daily; that his duties obliged him to walk upon and across the tracks of the New York, New Haven & Hartford Railroad Company; that he had been instructed by Mr. Value, the superintendent, to be on the watch for suspicious characters, and to protect his employers' property; that he carried a loaded revolver in the performance of his duties, being duly authorized by a permit from the town of Bourne to carry such a weapon; that when he left the office with Trench he had not indicated by his conversation or actions that he intended to depart from the sphere of his duties; and that at no time during the occurrence was he taken outside the course of his work.

The evidence further shows that about 3 A.M., on Oct. 9, 1914, notice was given to Deputy Sheriff Harvey L. Hart that "yeggmen" had robbed the safe at the Bourne Post Office; that Albert L. Trench, the bridge operator at Buzzards Bay, whose station was in close proximity to the property of the subscriber, later notified the deputy sheriff that the robbers had just crossed the bridge; that the deputy sheriff and his brother, fully armed, started out to catch the "yeggmen," and seeing Harbroe and Trench acting "suspiciously," and the latter, thinking also that the deputy sheriff and his brother were also acting in a suspicious manner, each pair mistook the other for the burglars; that Trench and Harbroe heard the command, "Hands up;" that the morning was foggy, and it was impossible to distinguish who the men were; and that shots were exchanged on both sides, and in the mêlée Harbroe was fatally wounded.

The evidence also shows that it was the duty of the employee, William A. Harbroe, in his capacity as a night watchman, to guard the property of his employer from danger of theft, or harm of any kind, and that, in defending himself from attack by men whom he supposed to be desperate characters, although they were in reality officers of the law, the resulting

fatal injury arose out of and in the course of his employment. The danger of injury by reason of the attack of intruders, or robbers, was a special risk of the employment of Harbroe, and the fact that his shooting by the officers of the law was the result of a misunderstanding none the less brings the fatality within the scope of the employment, and entitles the widow to the compensation due under the statute.

The committee of arbitration finds, upon all the evidence, that the employee, William A. Harbroe, received a personal injury, resulting fatally, on Oct. 9, 1914, which arose out of and in the course of his employment, by reason of the special risk attached to his duties as a night watchman in the employ of the subscriber, and that his widow, Edna May Harbroe, who lived with him at the time of death, is conclusively presumed to be wholly dependent upon him for support, and is, therefore, entitled to a weekly compensation of $9.33, that is, two-thirds of his average weekly wage of $14, for a period of $428^{676}/_{933}$ weeks from the date of the injury, the total sum due under this decision being $4,000.

THOMAS F. BOYLE.
MOSES C. WATERHOUSE.

James Thomas Pugh dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, April 8, 1915, at 11.30 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that William A. Harbroe, the employee, received a personal injury arising out of and in the course of his employment, and by reason of a special risk in connection therewith, on Oct. 9, 1914, while acting within the scope of his

contract of employment as a watchman for the Furst-Clark Construction Company, the subscriber. His contract of employment required him to work as a watchman for said subscriber from 6 P.M to 6 A.M. daily, and in the execution of such contract he was obliged to walk upon and cross the tracks of the New York, New Haven & Hartford Railroad Company, be on the lookout for suspicious characters, and protect the subscriber's property from all damage or harm. He was required to carry a loaded revolver in the performance of his duties, and had a legal permit to carry same.

On the morning of Oct. 9, 1914, at 3 o'clock, certain "yeggmen" had robbed the safe at the Bourne Post Office, and officers of the law, having received notification, started in pursuit. Harbroe, the employee, and Trench, the bridge operator, were seen by the officers acting in what was thought to be a suspicious manner. Harbroe and Trench both thought that the officers were acting suspiciously. Each, having knowledge of the proximity of the "yeggmen," were apprehensive of attack by them, and in the confusion of the early morning darkness and fog were unable to distinguish each other, shots were exchanged and Harbroe was fatally injured.

It was the duty of the employee, Harbroe, in his capacity as night watchman for the subscriber, to protect the plant and premises from intrusion by suspicious characters, from danger by theft, or from harm of any kind, and the said Harbroe was acting within the scope of his employment when he defended himself from attack by and harm from those whom he thought to be desperate criminals. The fact that the men who shot him were in reality officers of the law does not place Harbroe outside the scope of his employment, when, in resisting attack, he believed himself to be acting in the interest of the subscriber and in accordance with the terms of his contract of hire.

The Board finds, upon all the evidence, that the employee, William A. Harbroe, received a personal injury, resulting fatally, on Oct. 9, 1914, which arose out of and in the course of his employment, by reason of the special risk attached to the performance of his duties as a night watchman in the service of the subscriber, and that there is due the dependent, Edna

May Harbroe, the widow of the employee, a weekly compensation of $9.33 for a period of $428\frac{676}{933}$ weeks from the date of the injury, the total compensation payable by the insurer being $4,000.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
JOSEPH A. PARKS.
DAVID T. DICKINSON.
THOMAS F. BOYLE.

Decree of the Supreme Judicial Court on Appeal.

DE COURCY, J. The employee Harbroe was night watchman for the Furst-Clark Construction Company, which was engaged in work on the Cape Cod Canal, at Buzzards Bay in Barnstable County. This company had buildings, machinery and other property on both the northerly and southerly side of the canal, and on the easterly and the westerly side of the tracks of the New York, New Haven & Hartford Railroad Company, which tracks extended in a northerly and southerly direction on a bridge over the canal. At about 3 A.M. on Oct. 9, 1914, one Hart, a deputy sheriff at Buzzards Bay, was notified that "yeggmen" had robbed the safe at the Bourne Post Office. Later Albert L. Trench, the bridge operator employed by the railroad company, and whose station was near the buildings of the construction company, notified the deputy sheriff that the robbers had just crossed the bridge. Hart and his brother, fully armed, started in pursuit. In the vicinity of the company's office building they saw, and were seen by Trench and Harbroe. Each party, thinking that the others were acting in a suspicious manner, mistook them for the "yeggmen" in the darkness and fog, shots were exchanged, and Harbroe was fatally injured.

1. The insurer contends that the employee was "injured by reason of his serious and willful misconduct." (St. 1911, c. 751, Part II., § 2.) According to the findings of the Industrial Accident Board he was defending himself from attack by men whom he thought to be desperate criminals. There was some evidence that he did not use his revolver until after they had given the command, "Hands up!" and had fired upon him

and his companion, Trench. We cannot say, as matter of law, that the facts show such misconduct as would deprive an employee of compensation under the statute. And assuming that section 2 is applicable where the employee is killed (see Part V., section 2, defining "employee"), the same is true as to his dependents. (Nickerson's Case, 218 Mass. 158; Johnson *v.* Marshall, Sons & Co., Ltd. (1906), A. C. 409.)

2. The finding of the Board, that Harbroe's injury arose in the course of his employment, has some support in the evidence. It occurred during his working hours, and on the path between the office and the machine shop of his employer. The fact that he and Trench had left the office after seeing the supposed "yeggmen" approaching is not conclusive that he had abandoned the care of his employer's property. He may have been on his way to some other part of the plant, where he would be in less apparent danger of bodily harm. At the time of the shooting he was in a place where he was accustomed to go in the performance of his duties. It is merely conjecture to say that he intended subsequently to leave the premises of his employer. (Pigeon's Case, 216 Mass. 51. See Ross *v.* John Hancock Mutual Life Insurance Co., *ante.*)

3. The doubtful question is whether the injury arose out of the employment. It cannot reasonably be said that the risk of being shot by trespassing lawbreakers is incidental to or has its origin in the nature of a night watchman's ordinary employment. Undoubtedly there are particular instances where the occupation of a night watchman exposes him to risks substantially beyond the ordinary normal ones, and where the employment involves and obliges the employee to face such perils. Where the employee's injury is the result of such special risk incident to the employment, — where there is "a causal connection between the conditions under which the work is required to be performed and the resulting injury," the injury "arises out of" the employment within the meaning of the Workmen's Compensation Act. (McNicol's Case, 215 Mass. 497.)

In the application of this principle to cases of assault upon employees in the course of their employment the authorities

are not in harmony. Some of these cases are referred to in McNicol's case. In Challis *v.* London and Southwestern Railway (1905), 2 K. B. 154, where an engine driver was struck by a stone thrown willfully by a boy from an overhead bridge, and in Nisbet *v.* Rayne & Burn (1910), 2 K. B. 689, where a cashier employed regularly to carry wages by train to a colliery was robbed and murdered in the course of the journey, it was held that the injury arose out of the employment. On the other hand, in Blake *v.* Head, 106 L. T. 822, 5 B. W. C. C. 303, where a felonious assault was committed by the employer, and in Mitchinson *v.* Day (1913), 1 K. B. 603, where a carter in charge of his employer's horse was assaulted by a drunken man (both referred to in McNicol's Case), it was held that the injury did not arise out of the employment. Anderson *v.* Balfour (1910), 2 Ir. R. 497, was the case of a gamekeeper who was attacked by poachers, but the question was whether the injury resulted from an "accident," not whether it arose out of the employment. The same is true of Murry *v.* Denholm & Co. (1911), S. C. 1087, 5 B. W. C. C. 496, where a workman was attacked by strikers. It was also held that the injury arose out of the employment in Kelly *v.* Board of Management, Trim Joint District School, 47 Ir. L. T. 151, affirmed by H. L. (1914), A. C. 667, where a schoolmaster was assaulted by some of the boys whose enmity he had incurred owing to his efforts to maintain discipline; and in Weeks *v.* William Stead, Lim., where the yard foreman of a firm of furniture movers was fatally assaulted by one of the odd job men who was employed at times by the firm. (See also MacFarlane *v.* Shaw (Glasgow), Lim. W. C. & I. R. (1915), 32. Among the cases *contra* see Collins *v.* Collins (1907), 2 Ir. R. 104; Shaw *v.* Wigaw Coal and Iron Co., 3 B. W. C. C. 81; Clayton *v.* Hardwicke Colliery Co. (1914), W. C. & I. R. 343.)

The question we have to determine is whether in the case at bar there was evidence upon which the Board could find that Harbroe's death arose out of a special risk incident to the performance of his duties as a night watchman. There was no evidence that this property ever had been injured by wrongdoers, or that from its character or location it was specially exposed to theft or harm at the hands of trespassers.

He was not shot while protecting his employer's property from thieves. At the time of his accident the property was in no way threatened, nor did Harbroe suppose it was. He was not fired upon because he was the watchman in charge. The injury might quite as well have been suffered by any person who happened to be in the locality, whether employed by the construction company or not. Further, although Harbroe mistakenly believed that the two approaching figures were "yeggmen," they were in fact an officer of the law and his assistant, who were in the performance of their duty, seeking to apprehend the men who recently had robbed the post office. The injury which they inflicted was the result of an unfortunate misapprehension on their part (to which Harbroe himself unwittingly contributed), and cannot reasonably be said "to have had its origin in a hazard connected with the employment and to have flowed from that source as a rational consequence." (Reithel's Case, 222 Mass. 163, 165.) As was said in Madden's Case, *ante*, "The rational mind must be able to trace the resultant personal injury to a proximate cause set in motion by the employment and not by some other agency, or there can be no recovery." We are constrained to say that there was no evidence to support the finding that the employee's injury "arose out of" his employment. The decree is reversed and a new decree is to be entered in favor of the insurer.

So ordered.

CASE No. 1567.

DELIA DEVNEY, MOTHER AND DEPENDENT OF THOMAS W. DEVNEY (DECEASED), *Employee.*

CITY OF BOSTON (FIRE DEPARTMENT), *Employer.*

"LABORERS, WORKMEN AND MECHANICS." INTERPRETATION OF PHRASE. FIREMAN NOT WITHIN MEANING OF PHRASE. LABORER IS PERSON WITHOUT PARTICULAR TRAINING. "WORKMEN AND MECHANICS" BROADLY EMBRACE THOSE SKILLED IN USE OF TOOLS. FIREMEN ARE PUBLIC OFFICERS. CIVIL SERVICE CLASSIFICATION OF "OFFICIAL SERVICE" AS DISTINGUISHED FROM "LABOR SERVICE." COMPENSATION NOT AWARDED CLAIMANT.

The record shows that Devney was a hoseman and a member of a fire company stationed at one of the engine houses of the city of Boston. His dependent claimed compensation, alleging that the decedent was a laborer, workman or mechanic in the employ of the city, within the meaning of the St. of 1913, chapter 807. The only question considered on appeal by the Supreme Judicial Court was whether the decedent was a laborer, workman or mechanic.

Held, that the decedent was a workman within the meaning of the statute.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appealed to Supreme Judicial Court.

Decision. — The court held that the decedent was not a laborer, workman or mechanic.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Delia Devney, mother and dependent of Thomas W. Devney, deceased, *v.* City of Boston, this being case No. 1567 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, representing the Industrial Accident Board, chairman, Dennis W. Hagerty, representing the dependent, and George H. McDermott, representing the employer, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, New Albion Building, Boston, Mass., on Wednesday, March 24, 1915, at 10 A.M., continuing on Saturday, April 10, at 10 A.M. at engine house, engines 38 and 39, Congress Street, Boston, Mass.

James M. Graham appeared for the dependent, and Walter J. O'Malley appeared for the employer.

The city of Boston, through its counsel, Walter J. O'Malley, raised two issues: —

1. That the personal injury which caused the death of the employee did not arise out of and in the course of the employment of Thomas W. Devney.

2. That Thomas W. Devney, a fireman in the employ of the city of Boston, was not a laborer, workman or mechanic within the meaning of these words as used in chapter 807 of the Acts of 1913.

Thomas W. Devney, the employee, a hoseman, fell through the sliding pole hole at engine house, engines 38 and 39, Boston, Mass., on Dec. 25, 1914, being almost instantly killed.

Delia Devney, mother of the deceased, testified that her husband died two and a half years ago. She had four children, Thomas, Sarah, Julia and Walter, Sarah being the oldest and Thomas next. Ever since her husband's death she had been dependent on Thomas for support. Walter had worked but three months in two years, and during that time had contributed $2 or $3 a week, which paid for his board. Sarah worked when she was able, and when her mother's condition was such as to allow her to work. Sarah had to remain at home to do the housework and care for her mother when she was ill, for she (the mother) is an invalid. Sarah herself is not well and is afflicted every winter with bronchial trouble, tonsillitis or sore throat. She works at piecework when she is able to work, and $6 is the largest amount she earns; she usually gave all she earned to her mother, with the exception of $1, and she was taken care of and her clothes were bought out of the rest. Thomas had averaged $15 a week since his father died; there may have been weeks when he gave her only $10, at times when he needed clothes or paid assessments. When she wanted coal or house rent he always supplied the money. He had been getting $21 a week, but received $23 a week as earnings at the time of his death; she could not state just how long he had earned $23, but it was some time before his death. Julia contributed to the household $6 and $7 a week, and sometimes $5 if she needed to get clothes or other things. Mrs. Devney said she has no other means of support than what she has just testified to; her husband left her nothing; she was wholly dependent upon Thomas; she does not own any real estate. She pays $17 for rent. Walter had earned $7 a week during the three months he worked at Fallon's Fish Market; he is doing nothing now. Sarah has not worked for two weeks, having been obliged to stay at home with her mother. Mrs. Devney has been ill off and on for a good many years, having trouble with her limbs. Sarah was at home all last summer. Julia has earned $16.50 a week, working for the L. G. Mutty Company, for a year. Thomas had been a member of the fire department for seven years and lived at home; they all lived together. She had received $100 from the relief fund for funeral expenses. Thomas had given her money to

buy clothes, and if she wished to go somewhere he supplied the extra money for the purpose; he often brought things home also. She did not figure upon all these things when she gave the average as $15 which he contributed; she had included the item for clothes, but not the rest. The $15 went into the household expenses.

Julia L. Devney testified that she lived with her mother and confirmed her mother's statements regarding the period that Walter worked and his earnings, as well as the health of her mother and sister. She has been earning $16.50 for just a year, in the employ of the L. G. Mutty Company. Thomas and she contributed to the rent of the house, but Thomas paid most of it. After her father's death Thomas was the support of the house; they looked to him as the head of the house; he was consulted and questioned and asked for money, and they went to him for everything that was needed. She had paid some weeks $7, and has given as much as $8, but she generally liked to keep her contribution down to $6. Thomas paid the father's funeral expenses and purchased every bit of the coal this winter. She had seen Thomas very very often give her mother the weekly pay, as well as small amounts, perhaps as much as a couple of dollars if the mother needed car fare. She had contributed more to her mother's clothes or the things the mother needed and to doctor's bills; she had paid a great many of those bills, because she had been the one to insist upon a doctor's attention; she did not think Thomas paid any, except Dr. Collier's bills, which she knew he paid. Her sister had an operation last spring and had to have a doctor. Last summer her mother was in bed for months; the doctor came every day for three weeks. If she had money she would give it for anything that was needed in the house, but she had not bought coal. She is the only one who is working now. She knew how much the brother Walter had given to her mother while he worked; if she were not present at the time, she would inquire; she knew about every payment he made while he was at the fish market. He had no steady employment she was positive; if he had been doing odd jobs he had not turned in a cent. They had to take care of him, and she had kept after him to find out everything he did.

Sarah A. Devney testified that she worked for the Thomas G. Plant Company when she could work; she has not worked for the last two weeks. The largest amount she earned was $6; it has run down to $4. She is obliged to stay home from work when her mother is ill and when she herself is ill. When she worked she put the most of her earnings into the home, keeping $1 for car fares; she got her clothes, board and room in return. There is no money coming in except as has been testified to. She corroborated the testimony of the mother and sister regarding conditions at home and Walter's inability to contribute.

Warren P. Dudley, secretary of the Civil Service Commission, testified that, according to Rule 5 of the civil service rules, offices and positions to be filled under these rules are classified in two divisions, as "the official service" and "the labor service;" that a hoseman, employed by the fire department of the city of Boston, is classified under "the official service;" that "the labor service" is divided into three classes: (1) laborers; (2) skilled laborers; (3) mechanics and craftsmen; that male persons doing any form of labor not included, in the opinion of the commission, within the classification of the first division, or official service, shall be deemed to be in the second division, or labor service; and that this is an arbitrary classification made by the Civil Service Commission itself, under the provisions of the statute. A fireman is in the official service in whatever branch of the department he may be; if he be a mechanic in the repair shop, and he is a fireman, he is under the official service; his duties may be entirely of a laborious nature. Men in other departments of the city of Boston, working in repair shops, come under the labor service. Being asked if there was any such classification as that of a mechanic in the fire department service, he said it depends upon what is meant by the fire department service; there are men in the repair shop who have gone in from the labor lists, and there are men who are firemen who have been assigned to work in the repair shop, the latter originally having been examined as firemen; they may be transferred by order of the chief or superintendent; as to any difference of classification after transfer, the commission never interferes with that; the transfer does not neces-

sarily appear on its books; there is no rule regarding the reporting of such a transfer; the records do not show it; the first classification is all that is recorded, so that a man might pass an examination as a hoseman, be admitted to the fire department, and be assigned to mechanical work, and the commission would have no knowledge of this fact. There is no ruling that a man appointed as fireman shall not labor, and the fact that he is classified under the official service is no indication that he is not going to labor. This classification is made for the purpose of separating the firemen from labor service, covering street laborers, etc., who do not take the examination as firemen and those who do; those who take the examination are under the official service; the laborers have a slight physical examination, and do not have to take a competitive examination. The commission has tried by its rules to include only such men as practically work with their hands all the time in the labor service, although it is true that there are people in the first division of the classified service whose work is very largely work with the hands; in other words, classification is classification for civil service purposes.

Walter Joseph Devney, brother of the deceased, testified that he lives with his mother and has been employed two days as census enumerator, and that prior to this employment he had worked but three months in the last two years, at Fallon's Fish Market, and received $7 a week at that time. During said period of two years, working a day at a time, he worked not more than eight days altogether. When he worked at the fish market he turned into the house $2 and $3 a week; he lived at home then, as now, — got his meals and slept there. He stopped working at the fish market on March 1 of this year; he was working when his brother died. He worked previously for the protective department, but left the employ of the department on the 17th of March, 1912; he had done no work during the rest of the year 1912, none in 1913, and the work in the fish market was all that he did in 1914, except one day on a furniture wagon. His clothes were provided by his mother and brother Tom; his brother gave him money every pay day. His brother took three meals a day at home, except on the occasion of a fire. His brother's average weekly wage

was $23.01 (confirmed by the records of the company). He had gone to the fire quarters on Christmas Day himself, and had found the rubber boots that his brother wore at the fire downstairs in the cellar drying.

George H. Hine, a hoseman, testified that he was at the fire, which occurred on December 24, with the deceased. Devney had been salting hydrants with Johnson, and discovered the fire; they pulled in the alarm and waited for the apparatus. Devney assisted in pulling the line off and taking it over the ladder, and worked on the roof, playing down through the skylights. They were ordered off the roof when the fire came through the windows underneath, and went back together over the ladder later, when the heat grew less, and worked again on the roof. When they finished their work on the fire, Devney assisting in putting the hose back on the wagon, they returned to quarters, where he assisted in removing the wet line and putting dry line back again. The work of salting the hydrants consists in shoveling off the snow and sleet from the hydrant covers and putting salt over the top to keep them from freezing. The hosemen assist in doing the work required at the house, sweeping, mopping, dusting, polishing brass, cleaning windows and general housework; the engineers clean the engines. He was asleep in bed when Devney was killed. He did not know whether or not Devney was sick after the fire. He saw him after he fell by looking through the pole hole only. Devney was at the foot of the pole on his back. The alarm of fire came in at 9.48 P.M. Devney was a new man at the fire house. He had not seen him under the influence of liquor. It was after 12 o'clock when he went to bed himself; he saw Devney getting ready for bed; he appeared to be in good health, so far as he could see; he had ridden back on the hose wagon with him. The "all out" came at 11.34 P.M.

Lieut. Jacob Hyman testified that he saw Devney working at the fire; he had gone over the ladder with him, assisting in carrying the line up; he went over the ladder twice. Devney had done the regular work of a fireman at the fire and at quarters. He was in bed at the time the employee fell. The ladder was an 85-foot ladder; the building was about 70 feet high. Devney appeared to be all right that night. He went up to bed before Devney.

John Michael Harrington testified that he was on patrol duty on the night of the fire; he took the floor at 2 o'clock; at about 3.20 he heard a thump on the floor, as he sat facing the street, and upon looking around he saw the deceased on the floor at the foot of the pole. He threw on the lights and saw him lying on his back, then went upstairs and notified the officers and men. They began working on him for artificial respiration, and did everything to bring him around, but he remained unconscious; then an officer notified the hospital and an ambulance came with a doctor who went to work on him. In the meantime some one had gone to the Edison people and got a pulmotor, and were working with that when the doctor came, but Devney was dead. He believed the doctor said when he arrived that there was a little spark of life in him, but he pronounced him dead in about five minutes. He had on what is called a "night hitch," rubber boots and pants, the pants fitting over the boots; they are kept right alongside of the bed. It is only in the winter time that they keep on the shirt outside the underwear. Devney's bed was the nearest to the pole hole, about 10 feet away, facing towards the pole. A fireman is on duty when at the fire house; if an alarm comes in when he is asleep it is his duty to go down to the main floor and be ready to go with his company. He had seen Devney after he came from the fire, but did not see him when he went to bed; as he was to be on patrol duty, he had gone upstairs immediately to get a little sleep. When he ran over to Devney after the fall, he found him lying with his head up against the wall and his right arm around the pole; from his appearance he saw he could do nothing; Devney was not able to speak; he was unconscious so far as he could see. The ambulance arrived in about fifteen or twenty minutes, and they were working on the deceased all that time; there seemed to be a little life in him at first, but he went back into unconsciousness. Devney had gone to the fire on engine 39 and he on engine 38, but he saw him when they got back from the fire about midnight, when they were putting the hose on the wagon, and he saw him when he went down to take the floor about 2 o'clock; he was in bed and appeared to be asleep. He thought that the boots found in the cellar were those

Devney wore at the fire; they were knee rubber boots, and he had them on because he was salting hydrants. He did not know whether the clothes Devney had on when he fell were those he wore at the fire or not; they were such clothes as he would have put on if he were going out to a fire after he had gone to bed.

William J. Connell testified that he saw Devney at the fire when he pointed out the hydrants to the company; he also saw him working at the fire, and rode back with him on the hose wagon; he talked with him at the fire house; he was not under the influence of liquor; he would have noticed it if he had been. He saw him last when he was getting into bed between 12 and 1 o'clock; it was dark in the room; he went to bed ahead of Devney. He heard the noise of the fall and saw the injured man through the pole hole; his back was resting on the mat and his right arm was around the pole, yet not touching it; he slid down the pole and did not see him move at all. He had worked with the pulmotor.

John O. Tabor, deputy chief of the Boston fire department, testified that Devney was a hoseman, not a full pay man. He performed all the service required relative to the extinguishing of fires under the supervision and direction of a superior officer; incidentally, he had other duties in quarters. A man is on duty twenty-four hours every day of the year in all fire houses in the city of Boston, extinguishing fires and doing everything that pertains or is incidental to the work of the fire department, under the direction of a captain of company headquarters. Devney had a day off every fifth day and relief hours, as well as one and a quarter hours for each meal three times a day, or two hours twice a day. He was supposed to be at quarters all the rest of the time, ready for call, if he did not have leave of absence or sick leave; he is ready for any service in which he may be called upon by the department officials while in headquarters and at all times, in bed or even at meals; if he does something detrimental to the service, even on his days off, he is subject to punishment; he is subject to his superior at all times; he can be impressed into service, as any citizen may be, while off duty, but only in cases of emergency.

Lieut. Harry E. Richardson testified that he had seen Devney

at the fire once, at the foot of the ladder, and at quarters when they were changing the hose on the wagon; after that Devney went up and changed his clothes and took a bath before he went to bed; he must have undressed, as it is against the rules not to do so. There was nothing in the line of his duty to require Devney to go down to the floor that night. He was asleep when the employee fell; Devney was apparently unconscious when he saw him. As to his being on duty while in bed, he was subject to call at any minute; no man is allowed to leave quarters without special permission; he was his superior officer, and had always found Devney a good type of young man; he had not come there until the early part of December, — about the 3d or 7th.

J. J. Caine, the captain of the company, testified that when the lights are out in the dormitory there is not light enough downstairs to show the hole up; there is only one light on the patrol desk, and it has a shade over it; there are two lanterns on the wagons which give light on the street floor. The men are supposed to be upstairs when not doing anything in the line of duty downstairs; they are not allowed to loiter on the main floor. If a man wants assistance he is supposed to get it from the captain; in the absence of the captain, from the lieutenant. If he is ill, he reports to the captain; he is not supposed to interfere with the patrolman. The rules are not iron bound, but the men are supposed to be upstairs if they have no business downstairs.

Francis C. Shannon, a fireman, testified that he was treasurer of the fireman's relief fund, an incorporated organization supported by legacies and receipts from balls given by the firemen; the city does not contribute anything to this fund, and there is no money belonging to the public connected with it. The statute, under which it is incorporated, deals only with the incorporation.

Dr. George B. Magrath, the medical examiner, testified that he arrived at the engine house within an hour of the notice, and found the body of the deceased lying on the floor; he was dead. On examining the body he was satisfied that there was some deep-seated injury to the spine and fracture of the skull. He had looked the body over again after it was transferred to

the mortuary, and had been satisfied with the external examination, so had not made an internal examination; he had found abnormal mobility of the upper part of the spine and evidence of fracture. He also conducted an inquiry at the engine house as to the whereabouts of the deceased prior to his fall. There was no doubt in his mind that the employee died of a broken neck. From the examination he made he could not say whether the deceased had been ill before the fall or not, or whether the injuries he found might have resulted from the fall after death; it was his recollection that he had heard that there were some signs of life, that the injured man had gasped once or twice. He did not find anything from the outside that would indicate heart disease; there were things to indicate that he did not die of a cerebral hemorrhage; the suddenness of the death excluded that possibility, to the doctor's mind. In making an examination in such a case the doctor said that when he is satisfied regarding the cause of death he goes no further; if he had had any doubt as to the cause of Mr. Devney's death he would have made an internal examination; he would have performed an autopsy and determined with the utmost detail what the body showed in every way. There was nothing to excite a feeling of doubt in his mind; the man had performed his duties as a sound and healthy man, and had rendered them within a few hours of his death, which disarmed the doctor from any suspicion that he was a sick man; his external examination of the body showed the employee to be a healthy man.

The evidence shows, with reference to the various claims of the employer: —

The city of Boston contended, on the testimony of the secretary of the Civil Service Commission, Warren P. Dudley, that the classification of the employee, Thomas W. Devney, as a fireman, in the the official service excluded him from the application of the Workmen's Compensation Act, the claim being made that the designation official service barred the fireman from recovery under the statute. The committee of arbitration was unanimous in coming to a decision that the classification in effect in the office of the Civil Service Commission had no bearing upon the question as to whether the

employee was a "laborer," "workman" or "mechanic." Mr. Dudley's testimony was substantially that "the commission has tried by its rules to include only such men as practically work with their hands all the time in the labor service, although it is true that there are people in the first division of the classified service (the official service) whose work is very largely with the hands; in other words, the classification is classification for civil service purposes."

With reference to whether the personal injury which caused the death of the employee arose out of and in the course of his employment, the evidence shows that, according to John O. Tabor, deputy chief of the fire department, a fireman "is on duty twenty-four hours every day of the year in all the fire houses in the city of Boston, ready for call," whether in bed or while at their meals. Even the firemen who are "off duty" are required, in cases of emergency, to respond to calls. It is a part of the contract of hire of a fireman, and it was so in Devney's case, to sleep at quarters, except when on leave of absence. On the night preceding the morning of the fatal injury Devney had been engaged at a fire from 9.48 o'clock to 11.34 o'clock, the time that the "all out" signal was sounded. The last that was seen of him prior to the occurrence of the injury was when he was preparing to retire to bed at about 12 o'clock. Nothing further was seen or heard of him until the sound occasioned by the fall of his body to the street floor of the engine house was heard at about 3.20 the next morning. He was found on the floor underneath the hole at the bottom of the pole which is provided for the purpose of permitting firemen to reach their apparatus without delay. The employee's neck was broken and his arm was in a position as if it had been grasping the pole. Dr. George B. Magrath testified that Devney's death resulted from a broken neck. The committee is unanimous in finding that the employee died by reason of a broken neck, as a result of an accidental fall.

With regard to the question raised as to the right of the committee to infer that the death of the employee arose out of and in the course of his employment, the evidence shows that the employee had been in attendance at a fire for several hours and had retired for the night. There was no question but that he was not intoxicated or in any abnormal condition

brought about by reason of any personal misconduct. It was only natural that he should be fatigued after the night's ordeal. He retired at midnight. His bed was about 10 feet from the pole hole and on the same side of the room as the pole hole. When found, he had his "night hitch" on. The "night hitch" consists of rubber boots and trousers, with suspenders, which may be drawn on instantly. The fact that he had put his "night hitch" on shows that he had arisen for some purpose, not specifically known. The testimony showed that the dormitory was in darkness, and that "when the lights are out in the dormitory there is not light enough downstairs to show the pole hole up." The question remaining for the committee to answer is, "What did Devney get up for?" Was it for a necessary or reasonable purpose? Many proper inferences may be drawn, and either of the following questions may be answered in the affirmative, the probabilities being, on the weight of the evidence before the committee, that such answers are reasonable upon all the facts and under all the circumstances.

Did Devney get up to ease nature; and being bewildered, or bothered by the darkness of the dormitory, after the fatigue of the evening's work at the fire, turn to the right instead of the left in the direction of the lavatory, and walk unsuspectingly into the pole hole and to his death? Or, perhaps he was not feeling well, after his strenuous work at the fire. Did he desire to go downstairs and seek the companionship of the patrolman, a fellow employee, on duty on the street floor of the engine house, for the purpose of getting assistance from him? It is one of the rules of the house that, if a man is ill, he should report to the Captain. The Captain's room door opened directly upon the pole hole and into the dormitory where Devney slept. Did Devney attempt to go into the Captain's room and while leaning over to knock on his door fall into the pole hole? Going further, it may be that Devney arose as if in a nightmare and stumbled over and into the pole hole. There is absolutely no evidence to show that Devney went to the pole hole for any private purpose. Every shred of evidence, from the testimony as to the character, habits, ability, application, worthiness and other qualities of the employee, shows that he was acting, in all probability, within the scope of his employment, and that, because of some necessity

connected by relation of cause and effect with his strenuous and continuous work of the hours preceding the fall, he fell to his death through the pole hole, and that said death arose out of and in the course of his employment.

Devney was a fireman, and the committee finds that a fireman is a workman within the meaning of the word as used in the chapter applicable to this case. As a fireman he was a skilled laborer, working with his hands and brain, his hands performing skillfully the laborious work of a fireman and bringing him within the scope of the legislative act that was intended to give to him and his dependents the benefits of the Workmen's Compensation Act.

The evidence shows that the employee, Thomas W. Devney, received an average weekly wage of $23, and contributed weekly to his mother and dependent, Delia Devney, for her support, the sum of $15. The amount due a person wholly dependent upon the employee for support would be the maximum of $10 a week. Since Delia Devney was only partially dependent for support upon the employee she is entitled to $^{780}/_{1196}$ of $10, or $6.52 weekly, for a period of five hundred weeks from the date of the injury.

The committee of arbitration finds, upon all the evidence, that the employee, Thomas W. Devney, was a workman in the employ of the city of Boston, and received a personal injury arising out of and in the course of his employment on Dec. 25, 1914, which resulted in his death on the same date; that his average weekly wages were $23; that Delia Devney, his mother, was partially dependent for support upon his earnings at the time of his injury and death; that he contributed $15 weekly from his earnings to her support; and that there is due the partial dependent, Delia Devney, a weekly compensation of $6.52 for a period of five hundred weeks from the date of the injury, that is, Dec. 25, 1914.

The requests for rulings attached hereto are refused in so far as they are inconsistent with these findings.

JOSEPH A. PARKS.
DENNIS W. HAGGERTY.

George H. McDermott dissents.

Employer's Requests for Rulings.

And now comes the city of Boston and asks the committee of arbitration in the above-entitled cause to make the following rulings: —

First. — The said Thomas W. Devney was not at the time of the injuries which caused his death a workman, laborer or mechanic in the employ of the city of Boston, within the meaning of chapter 807 of the Acts of 1913 and all acts in amendment thereof or in addition thereto.

Second. — Upon all the evidence the said Delia Devney is not entitled to receive compensation from the city of Boston on account of the death of Thomas W. Devney.

Third. — Upon all the evidence the said Delia Devney was not wholly dependent upon Thomas W. Devney at the time of his injury.

Fourth. — Upon all the evidence the said Thomas W. Devney's death did not result from injuries received in the course of his employment.

Fifth. — Upon all the evidence the said Thomas W. Devney's death did not result from injuries received by him which grew out of his employment.

Sixth. — The burden of proof is upon the alleged defendant, Delia Devney, to show by a fair preponderance of the evidence that the injuries received by the said Thomas W. Devney were received by him in the course of his employment, and also that the said injuries grew out of his employment.

Seventh. — The burden of proof is upon the alleged defendant, Delia Devney, to show by a fair preponderance of the evidence what caused the death of the said Thomas W. Devney.

Eighth. — Unless the said Delia Devney shall show by a fair preponderance of the evidence that the said Thomas W. Devney was engaged in the performance of duties within the scope of his employment as a member of the Boston fire department when he received the injuries that caused his death, she is not entitled to compensation from the city of Boston.

Ninth. — Unless the said Delia Devney shall show by a fair preponderance of the evidence that the employment in which the said Thomas W. Devney was engaged at the time he re-

ceived the injuries that caused his death was in the course of his employment as a member of the Boston fire department, and that said injuries grew out of said employment, she is not entitled to receive compensation from the city of Boston.

Tenth. — If the said Thomas W. Devney was found dead or in a dying condition on the floor of the engine house of the fire department of the city of Boston, near a pole used by the members of said department to slide from an upper to a lower floor in said engine house, and no one saw or heard the said Devney fall down said pole in the course of his employment as a fireman of the city of Boston, the said Delia Devney is not entitled to recover compensation for the death of the said Thomas W. Devney.

Eleventh. — If the said Thomas W. Devney did fall down a pole hole in an engine house of the fire department of the city of Boston, through which members of the said fire department are accustomed to slide from an upper to a lower floor, and if this committee of arbitration is not able to determine whether or not the said Devney suffered said fall while engaged in performing duties within the scope of his employment as a member of the fire department of the city of Boston, and that said fall grew out of said employment, the said Delia Devney is not entitled to recover compensation from the city of Boston for the death of said Thomas W. Devney.

Twelfth. — A hoseman of the fire department of the city of Boston is not a workman, laborer or mechanic within the meaning of chapter 807 of the Acts of 1913 and the acts in amendment thereof and in addition thereto.

Thirteenth. — The burden of proof is upon the alleged defendant, Delia Devney, to show how the said Thomas W. Devney received the injuries that resulted in his death.

Fourteenth. — Unless the committee of arbitration is satisfied by a fair preponderance of the evidence that said Thomas W. Devney received the injuries that resulted in his death during the course of his employment as a hoseman of the fire department of the city of Boston, and that said injuries and death grew out of his said employment, the said Delia Devney is not entitled to compensation from the city of Boston for said injuries and death.

Fifteenth. — There is not sufficient evidence to show that the injuries and death of the said Thomas W. Devney were caused by falling down a pole hole in an engine house of the fire department of the city of Boston.

Sixteenth. — Upon all the evidence Thomas W. Devney was not, at the time of the injuries which caused his death, a workman, laborer or mechanic in the employ of the city of Boston within the meaning of chapter 807 of the Acts of 1913 and all acts in amendment thereof or in addition thereto.

Seventeenth. — If the said Thomas W. Devney at the time of his said injury and decease was classified by the Civil Service Commission of Massachusetts as in the official service, he was not a laborer, workman or mechanic in the employ of the city of Boston within the meaning of chapter 807 of the Acts of 1913 and all acts in amendment thereof or in addition thereto.

Eighteenth. — The words workman, laborer or mechanic, in chapter 807 of the Acts of 1913, should not be considered severally but jointly. The statute is to be construed as if it read "laborers and mechanics working in the service of the city of Boston, or workmen engaged in manual or mechanical labor in the service of the said city."

Nineteenth. — It was not the intention of the Legislature, by chapter 807 of the Acts of 1913, to broaden the Workmen's Compensation Act so that it would extend to all employees of the city of Boston, but to restrict the said act to a separate class of public employees, namely, workmen, laborers and mechanics in the employ of said city of Boston.

Twentieth. — It was not the intention of the Legislature, by chapter 807 of the Acts of 1913, to extend the benefits of the Workmen's Compensation Act to any employees of the city of Boston other than the three classes of employees classified as in the labor service by the Civil Service Commission of Massachusetts, namely, laborers, skilled laborers, mechanics and craftsmen.

WALTER J. O'MALLEY.

Employer's Requests for Findings of Fact.

And now comes the city of Boston in the above-entitled cause and asks the committee of arbitration to make the following findings: —

First. — Thomas W. Devney was not a workman, laborer or mechanic in the employment of the city of Boston at the time of his injuries and decease.

Second. — Thomas W. Devney was at the time of his injuries and decease a hoseman of the fire department of the city of Boston.

Third. — Thomas W. Devney did not receive the injuries which resulted in his death while in the course of his employment as a hoseman of the fire department of the city of Boston; and said injuries did not grow out of his said employment.

Fourth. — Delia Devney was not wholly dependent upon Thomas W. Devney at the time of said Thomas W. Devney's injuries and decease.

Fifth. — Sarah Devney, Julia Devney and Walter Devney, children of the said Delia Devney, were contributing to the support of the said Delia Devney at the time of the alleged injuries to the said Thomas W. Devney.

Sixth. — The following is a civil service rule promulgated by the Massachusetts Civil Service Commission, and in force at the time of the said injury and decease of said Thomas W. Devney.

Classification of the Service.

Rule 5. — The offices and positions under these rules shall be classified in two divisions: the first to be known as "The Official Service" of the Commonwealth and the several cities thereof; the second as "The Labor Service."

Seventh. — All members of the fire department in the city of Boston are classified as in the official service.

Eighth. — The labor service of the city of Boston has been divided by the Civil Service Commission of Massachusetts into three classes, — Class I., laborers; Class II., skilled laborers; Class III., mechanics and craftsmen.

WALTER J. O'MALLEY.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, June 10, 1915, at 10.30 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows and the Board finds that the employee, Thomas W. Devney, a fireman in the employ of the city of Boston, received a personal injury, arising out of and in the course of his employment, on Dec. 25, 1914, it being reasonable to so infer upon all the facts as shown by the report of the committee of arbitration; that Devney, as a fireman, became entitled to the benefits provided by the Workmen's Compensation Act by reason of the acceptance by the city of Boston of chapter 807, Acts of 1913, which requires the accepting municipality to furnish the benefits provided by the compensation statute to "laborers, workmen and mechanics" who receive personal injuries arising out of and in the course of their employment; that the said Devney contributed an average of $15 weekly to the support of his mother, Delia Devney, his partial dependent, during the year preceding the date of his fatal injury; and that there is due the said partial dependent a weekly compensation of $6.52 for a period of five hundred weeks from the date of the injury, that is, from Dec. 25, 1914, from the city of Boston.

The requests for rulings by the employer, hereto attached, are refused in so far as they are inconsistent with these findings.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

Decree of the Supreme Judicial Court on Appeal.

BRALEY, J. By the St. of 1913, c. 807, cities and towns upon acceptance of the act may pay compensation "to such laborers, workmen and mechanics" employed by them "as receive injuries arising out of and in the course of their employment; or, in case of death resulting from such injury, may pay compensation . . . to the persons entitled thereto" as provided in the St. of 1911, c. 751, and acts in amendment thereof. It appears from the record that the city accepted the statute, and the question is whether the deceased employee upon whom the claimant, his mother, was partially dependent, was a laborer, workman or mechanic within the meaning of the statute. At the time of his injury and death he was a hoseman and a member of a fire company stationed at one of the engine houses of the city where he was housed when on duty, performing the services required by his position. The Legislature, by St. 1880, c. 107, as amended by St. 1881, c. 22, St. 1909, c. 308, St. 1911, c. 134, and St. 1913, c. 108, created a corporation known as the "Boston Firemen's Relief Fund," to hold moneys and real and personal estate not to exceed a certain amount for the benefit of members of the Boston fire department or their families requiring assistance. (Ficket *v.* Boston Firemen's Relief Fund, 220 Mass. 319.) Under the rules and regulations provided by the municipal ordinances the departmental force is classified in three divisions. The permanent or "fire force" to which the decedent belonged was organized in companies, the members of which were required to wear uniforms, and were subject to penalties imposed by the fire commissioners for infraction of the rules and discipline of the department. It also is shown that the civil service rules as established by the commission under R. L., c. 19, §§ 7, 11, classified a hoseman employed by the city as in "the official service" and not in the "labor service," which is divided into "laborers," "skilled laborers," "mechanics and craftsmen." To ascertain its true construction the statute under consideration may be read in connection with these statutes, and St. 1910, c. 196, St. 1912, c. 453, enacted in favor of firemen in other cities, and the R. L., c. 32, relating to fire

departments, fire districts and firemen's relief funds, as amended by St. 1902, c. 108, § 1, St. 1906, cc. 171, 476, and St. 1911, c. 321. The Legislature at the date of enactment must be presumed to have known that under previous and unrepealed legislation the city, in common with other municipalities, had an established fire department with a fixed and permanent tenure of service for its members who had been expressly recognized as being in a class by themselves, and that this court, in Fisher *v.* Boston, 104 Mass. 87, had held them to be public officers for whose negligence when acting in the discharge of their duties the city is not responsible. (Shelton *v.* Sears, 187 Mass. 455; Woods *v.* Woburn, 220 Mass. 416). If when extending the compensation act it also was the purpose to include all persons of whatever rank serving in the various municipal departments, plain and unambiguous terms should have been used showing the change and enlargement. A laborer ordinarily is a person without particular training who is employed at manual labor under a contract terminable at will, while workmen and mechanics broadly embrace those who are skilled users of tools. (Oliver *v.* Macon Hardware Co., 98 Ga. 249; Ellis *v.* United States, 206 U. S. 246; Breakwater Co. *v.* United States, 183 Fed. Rep. 112, 114. Compare State *v.* Ottawa, 84 Kan. 100.) And the framers of the statute undoubtedly intended that the words "laborers, workmen and mechancis" should be taken in their ordinary lexical sense, which excludes the trained and disciplined force comprising the defendant's fire department. The provisions of section 5 of the statute, that "Any person entitled to receive from the commonwealth or from a county, city, town or district the compensation provided, . . . who is also entitled to a pension by reason of the same injury shall elect whether he will receive such compensation or such pension and shall not receive both," has not been forgotten. But this section is to be read with section 7, which expressly says that the provisions of St. 1911, c. 751, and acts in amendment thereof, "shall not apply to any person other than laborers, workmen and mechanics employed by counties, cities, towns or districts having the power of taxation." We are accordingly of opinion that the ruling asked for by the city, that the

decedent was not a workman, laborer or mechanic at the time of his injury and death, should have been given. The decree must be reversed, and a decree is to be entered in favor of the employer.

So ordered.

CASE NO. 1568.

JERRY PECOTT, *Employee.*
ARLINGTON MILLS, *Employer.*
AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*
FRANCIS A. CREGG, *Physician.*

MEDICAL SERVICES. RIGHT TO SELECT ATTENDING PHYSICIAN GIVEN TO INSURER. NOTICES CONSPICUOUSLY POSTED OFFERING SERVICES OF PHYSICIANS. EMPLOYEE CAN READ AND SPEAK ENGLISH. CHARGED WITH KNOWLEDGE OF NOTICES AND THEIR CONTENTS. LEGISLATURE DID NOT INTEND TO GIVE EMPLOYEE THE PRIVILEGE OR RIGHT TO SELECT HIS OWN PHYSICIAN AT EXPENSE OF INSURER. EXCEPTION ONLY IN CASES OF EMERGENCY OR FOR OTHER JUSTIFIABLE CAUSE. EMPLOYEE RECEIVES INJURY ON SATURDAY. TELEPHONE NOTICE OF INJURY GIVEN ON MONDAY. WITHOUT ATTEMPTING TO OBTAIN SERVICES OF INSURER'S PHYSICIANS, EMPLOYEE ENGAGED ONE HIMSELF. OPERATION PERFORMED ON FOLLOWING WEDNESDAY. INSURER NOT LIABLE.

The employee was injured on Saturday morning, a half hour before closing time. He went home without reporting the injury, and later, because of the intense pain, called in a physician of his own selection. This physician advised an operation, which was performed on the following Wednesday. At the time of the injury notices were posted in conspicuous places, in the English language, informing employees that certain doctors had been engaged by the insurer to furnish medical treatment to them. The employee could read and write English, but made no attempt to obtain the services of either of the physicians named in the insurer's notice.

Held, that the employee had justifiable cause for the calling in of his own physician.

Review before the Industrial Accident Board.

Decision. — Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appeal to Supreme Judicial Court.

Decision. — The court held that the employee was not justified in engaging his own physician.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Jerry Pecott *v.* American Mutual Liability Insurance Company, this being case No. 1568 on the files of the Industrial Accident Board, reports as follows: —

The arbitration committee, consisting of Thomas F. Boyle of the Industrial Accident Board, chairman, Frederic N. Chandler, representing the employee, and Arthur Sweeney, representing the insurer, heard the parties and their witnesses in the Hearing Room of the Court House, Lawrence, Mass., on Friday, March 26, 1915, at 2 P.M.

Messrs. Cregg & Cregg appeared as counsel for the employee, and Gay Gleason appeared for the insurer.

The question in this case is whether the employee had the right to procure the services of Dr. Cregg, and if so, whether his bill of $65 was a reasonable one for the services rendered.

Jerry Pecott testified: —

On Oct. 31, 1914, some time between half past 11 and 12, I strained myself while lifting a shuttle. When I got home I noticed that the pain in my side was coming from a lump, so I went to Dr. Cregg. On Monday I again went to the doctor, and on Tuesday I went to the hospital. I was operated on by Dr. Cregg on Wednesday. My hospital bill was $41, and of this amount Mr. Edwards of the insurance company said he would allow me $33.28, this being the amount for two weeks' treatment. I did not say anything about my injury to the mill people on Saturday because it was so late in the day when I got hurt; it was almost time to go home. On Monday I telephoned to where I worked, but I could not get the weave room, so I told the fellow in the main office to tell them at the mill that I would not be in, that I was going under an operation. I never saw any notice in the mill saying that I must go to a certain doctor. There might have been notices pasted up, but I never read them. I saw signs over the drinking fountain, but I never paid any attention to them. I can read and speak English. Somebody told me that they put up some notices in the mill since my accident. The following notice might have been posted before I was injured, but I did not take notice of it: "Notice to employees: Employees injured in this establishment can be treated free of charge by Dr. Carl R. Moeckel, 426 Broadway, Lawrence, whose services are furnished by the American Mutual Liability Insurance Company. If Dr. Moeckel is not at liberty to attend, Dr. Howard L. Cushman, 70

Broadway, Methuen, may be called to treat the case until the services of Dr. Moeckel may be obtained. The bills of other physicians will not be paid by the insurance company." I did not know anything about compensation until a man from the union called and told me about the insurance company, and asked me if I wanted him to take my name. He said he would go to Mr. Fletcher and tell him about me. This was after I went to the hospital. I did not send any written notice to the mill.

Dr. Francis A. Cregg testified: —

I first saw Mr. Pecott on Saturday afternoon, Oct. 31, 1914. When I reached my office, a little after 2, I found him there. He was complaining of pain in his right inguinal region, and he spoke to me about an injury that he had in the mill. He said he was lifting a shuttle and the thing slipped away from him, and he grabbed the second time for it and then he felt this terrific pain in his side. He went home and he said the thing bothered him so much that he began to look himself over to see where the pain was coming from, and he found that there was a little bunch in his groin. He came to me and I examined him and found he had a lump about the size of a small egg in his right inguinal region. It was tender on pressure, but it was reducible. He had marked impulse, and it was very sore to touch. He said that he never noticed any bunch there before. He asked me what it was and I told him that he had a hernia there. He asked me what I thought he should do and I told him I thought he had better be operated on. A man at his work with a hernia would be liable to have strangulation at any time. He was so tender and sore that I thought he ought to be operated on right away. He said he would have to go home and talk it over with his wife first. He came back on Monday morning and said he had some things he wanted to fix up, but that he would go to the hospital on Tuesday. My bill of $65 has been submitted. I feel that this bill is a reasonable one. This man might have waited two days or two weeks before the operation was performed, but there was a chance that he might have had strangulation at any time, perhaps in walking home. Any one with a hernia is liable to have strangulation. If a man has an acute rupture like this man, he is in danger. He could not have worn a truss when I saw him because he could not stand it on him. I knew Mr. Pecott worked at the Arlington Mills. I did not know that the Arlington Mills carried insurance, but I supposed they did. It was my impression that those getting hurt in the mill could go to any doctor. I did not know that the Arlington Mills sent the men to Dr. Moeckel. My bill of $65 included $15 which I paid for assistance. I paid one assistant $10, and $5 to the man who etherized. That left $50 for my fee, and this included the operation and two weeks' treatment. The house physicians at the hospital do not help the doctors.

Dr. Timothy Joseph Daly testified: —

I do not consider any hernia an emergency case unless there is strangulation. About 15 or 20 per cent. of the people having hernia walk around with it. This case as it has been described to me does not seem to be an emergency case. If a patient comes into my office, I do not usually ask him if he had another doctor. If he asks me to notify his doctor I do so, otherwise, I do not. At an operation we always have two doctors. I know that Dr. Moeckel is not a surgeon, and I think if this man went to him he would transfer him to the General Hospital and get somebody else to perform the operation. If a man came into my office and I found he had hernia, and there was a lump about the size of an egg, I would advise an operation. If a man was walking around I would not consider it an emergency case.

C. Clifford Chadwick testified: —

I am a clerk in the Arlington Mills and take charge of all notices of injuries. I first received notice of Mr. Pecott's injury on November 10. The notice in regard to employees being treated by Dr. Moeckel was pasted up in the mill prior to the time Mr. Pecott was injured, right in the room where he worked. I was notified by the clerk in the weaving room that Mr. Pecott had received an injury.

The evidence shows that the employee, Jerry Pecott, received an injury arising out of and in the course of his employment; that the accident was caused by his lifting a shuttle in the Arlington Mills in Lawrence on Oct. 31, 1914, at which time he strained himself in the abdomen, causing a rupture which developed later into a severe hernia; that the accident happened near the closing hour of the factory on or about Saturday noon; that on account of the severity of the injury he immediately called on Dr. Cregg who advised an operation at once; that on the following Tuesday he went to the hospital, and on Wednesday he was operated on by Dr. Cregg, and that Pecott did not know the rules and regulations of the Arlington Mills whereby all employees were required, in case of accident, to go to Dr. Moeckel, the insurance company's doctor, although signs with these instructions were posted in conspicuous places in the room where he was working.

The committee of arbitration finds on all the evidence that Pecott did not know about the regulations concerning the insurance company's doctor, and, considering the pain and

seriousness of the injury, he was justified in immediately seeking the services of Dr. Cregg whom he knew most about; and on the testimony of Dr. Cregg who performed the operation, and also Dr. Daly, the insurance company's doctor, who stated that if a man came into his office and he found he had hernia such as is described in Pecott's injury he would advise an operation, the committee further finds that Dr. Cregg is entitled to the payment of $50 as his fee for the said operation as provided by section 5, Part II. of the act, which states that in a case of emergency or for other justifiable cause, where a physician other than the one provided by the association is called, the reasonable cost of his services shall be provided by the association.

THOMAS F. BOYLE.
FREDERIC N. CHANDLER.

Arthur Sweeney dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, April 29, 1915, at 11 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

Whether the bill of the physician who performed the operation for hernia upon the employee should be paid by the insurer depends upon the interpretation which should be given to Part II., section 5 of the statute as amended by section 1 of chapter 708, Acts of 1914, in effect Oct. 1, 1914, some time prior to the occurrence of the injury.

The amended section provides that "where, in a case of emergency, or for other justifiable cause, a physician other than the one provided by the association is called in to treat the injured employee, the reasonable cost of his services shall be paid by the association, subject to the approval of the indus-

trial accident board. Such approval shall be granted only if the board finds that there was justifiable cause and that the charge for the services is reasonable."

The evidence shows and the Board finds that there was justifiable cause for the calling in by the employee of the physician, Dr. Francis A. Cregg, to treat him for an acute, painful and dangerous condition of hernia; and that the employee was justified in calling in his own physician because the pain from the injury became acute at a time during Saturday afternoon when his place of employment had shut down for the day; also because he had no knowledge of the fact that the insurer had provided the services of skilful physicians to give him necessary treatment, nor had the employee any knowledge of his right to benefits under the Workmen's Compensation Act at that time; and further, because, at the time of his subsequent consultations with Dr. Cregg, he was advised that strangulation was imminent and an operation was imperative.

The employee first received the injury on Saturday morning, Oct. 31, 1914, some time between half past 11 and 12 o'clock. The factory closed at 12 o'clock noon. The pain became intense in the afternoon and he consulted Dr. Cregg. The latter advised an operation. On Monday, Nov. 2, 1914, the employee called up his employer and tried to communicate by telephone with his foreman in the weave room. Being unable to talk with him, he left word with the main office that he had received an injury, was going to have an operation, and that he would not be able to come to work until the operation was performed and he had recovered therefrom. On Monday afternoon he called on Dr. Cregg and told him that he had some personal matters to take care of, and that on Tuesday he would be ready to undergo the operation. Dr. Cregg performed the operation on Nov. 4, 1914, and rendered a bill for $65 to the insurer. Payment was declined, and the committee of arbitration, passing upon the matter on an industrial basis, and in accordance with the practice of the Industrial Accident Board, reduced the bill to $50, this being a reasonable fee for a major operation of this character under the Workmen's Compensation Act.

In ordering the payment of the bill of the physician by the insurer in this case the Board has in mind the probable in-

tent of the Legislature in amending the section under which it is possible to make this award. The statute requires insurers to "furnish" reasonable medical and hospital services to each injured employee, provided his employer is insured thereunder. Recognizing the fact that, under certain circumstances, that is, "in a case of emergency, or for other justifiable cause," the employee may engage his own physician, adequate provision has been made for just such a case as that now under consideration. The employee received his injury just before closing time, and it was not thought, at the moment, that it was of sufficient severity to require medical or surgical aid. The employee believed he would be all right if he went home. The evidence shows that, despite the fact that notices were posted in language which the employee could read, he had no knowledge either of the readiness of the insurer to furnish medical treatment, or the fact that he became entitled to compensation after he had been incapacitated for work for a period of two weeks by reason of the injury. Therefore, in the afternoon, when the pain became intense, he went to his own physician for relief. The factory was shut down over Saturday afternoon and Sunday, and on Monday he called his employers on the telephone and notified them of the fact of his injury and forthcoming operation. No suggestion or offer was made of medical or surgical treatment, and the employee, ignorant of his rights under this remedial statute, and convinced that strangulation was imminent by reason of the acute condition of hernia, consented to the operation which was successfully performed by his attending physician. The fee allowed for the performance of the operation is that which is customarily approved for such a major operation by the Board and invariably paid by insurers. It is in accord with the custom established by the Industrial Accident Board, that all fees for services thereunder shall be based upon the average minimum charge in the locality in which the service is rendered. Therefore no additional burden is imposed upon the insurer by the order of the Board that the physician should receive a fee of $50 for the services rendered in this case.

In acting favorably upon the claim of the physician, the Board rules that it is a question of fact which should be passed

upon separately in each case, as to whether or not the employee has acted "in a case of emergency, or for other justifiable cause," and finds, upon all the evidence, that there was justifiable cause for the engagement by the employee of his own physician, Dr. Francis A. Cregg, and that there is due the said physician the sum of $50 from the insurer, said sum being a reasonable fee for the services performed under the statute.

The requests for rulings by the insurer, attached hereto, are dealt with as follows: —

Nos. 1 and 2 are given.

With regard to No. 3, the evidence of Mr. C. Clifford Chadwick, as shown by reference to the verbatim report: "These notices were generally posted in conspicuous places in all the rooms."

With regard to No. 4, Mr. Chadwick's evidence is that "there were notices posted in the room where Mr. Pecott worked."

No. 5 is given.

With regard to No. 6, the employee reported the injury by telephone on Monday, Nov. 2, 1914.

With regard to No. 7, reference to the verbatim report shows that Dr. Cregg testified: "This man had an acute pain in his side. I examined him and found that he had a lump about the size of a small egg in his right inguinal region, which was very sore to touch. He could not have worn a truss when I saw him because he could not stand it on him. If a man has an acute rupture like this man had he is in danger."

No. 8 is given.

Nos. 9, 10 and 12 are refused, in so far as they are inconsistent with these findings.

No. 11 is given.

DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

Insurer's Requests for Rulings and Findings.

1. The following notice was posted in the employer's factory at the time of and for a long time prior to the injury to the employee, Jerry Pecott: —

NOTICE TO EMPLOYEES.

Employees injured in this establishment will be treated free of charge by Dr. C. R. Moeckel, 426 Broadway, Lawrence, Mass., whose services are furnished by the American Mutual Liability Insurance Company. If Dr. Moeckel is not at liberty to attend, Dr. H. L. Cushman, 28 Annis

Street, Methuen, Mass., may be called to treat the case until the services of Dr. Moeckel may be obtained.

The bills of other physicians will not be paid by the insurance company.

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY,
50 STATE STREET, BOSTON, MASS.

2. Said notice was printed in large type and was a conspicuous notice.

3. Upon all the evidence, the Industrial Accident Board must find that said notice was p sted, among other places, near the overseer's office, near the timekeeper's office, and over the drinking fountain.

4. Upon all the evidence the Industrial Accident Board must find that said notice was suitably posted in places frequented by the employee more especially in the room where the employee was working.

5. Upon all the evidence the Industrial Accident Board must find that the employee could read and understand English.

6. Upon all the evidence the Industrial Accident Board must find that the employee received an injury in the course of and arising out of his employment on Oct. 31, 1914, but did not report same to the employer until Nov. 10, 1914.

-7. Upon all the evidence the Industrial Accident Board must find that the injury from which the employee was suffering was a simple inguinal hernia.

8. Upon all the evidence the Industrial Accident Board must find that the employee was operated upon on November 4.

9. Upon all the evidence the Industrial Accident Board must find that this was not a case of emergency within the meaning of Part II., section 5 of the Workmen's Compensation Act (so called), as amended by section 1, chapter 708, Acts of 1914.

10. Upon all the evidence the Industrial Accident Board must find that this was not a case of "other justifiable cause" within the meaning of Part II., section 5 of the Workmen's Compensation Act (so called), as amended by section 1, chapter 708, Acts of 1914.

11. The Industrial Accident Board must find, on all the evidence, that the notice set forth in Request No. 1 was suitably posted in a conspicuous place in the room where the

employee was working; that the said employee could read and understand English; that the said employee did not read said notice, though he saw signs posted up; that on Oct. 31, 1914, the said employee received a hernia in the course of and arising out of his employment; that the said employee consulted Dr. Cregg, his family physician on Oct. 31, 1914; that Dr. Cregg performed an operation for the said hernia on Nov. 4, 1914.

12. If the Industrial Accident Board finds that the notice set forth in Request No. 1 was suitably posted in a conspicuous place in the room where the employee was working; that the said employee could read and understand English; that the said employee did not read said notice though he saw signs posted up; that on Oct. 31, 1914, the said employee received a hernia in the course of and arising out of his employment; that the said employee consulted Dr. Cregg, his family physician on Oct. 31, 1914; that Dr. Cregg performed an operation for the said hernia on Nov. 4, 1914, then the Industrial Accident Board must find that Dr. Cregg, a physician other than the one provided by the insurer, was called in not in a case of emergency or for other justifiable cause, and that, therefore, the services of Dr. Cregg shall not be paid by the insurer.

By its Attorneys,

SAWYER, HARDY, STONE & MORRISON.

Decree of the Supreme Judicial Court on Appeal.

CARROLL, J. The employee was injured Saturday, Oct. 31, 1914, between half past 11 and 12 o'clock. As usual on Saturday the mill closed at noon. In the afternoon the pain from the injury became intense, and he consulted Dr. Cregg, who advised an operation. Monday the employee made an attempt to notify his foreman of the injury, and, failing in this, he left word by telephone with one of the office employees. On Wednesday, Nov. 4, 1914, he was operated on for hernia.

At the time the employee was injured there were posted in the mill where he worked printed notices informing employees that in case of injury Dr. Carl R. Moeckel or Dr. Howard L. Cushman was to be called, and that "bills of other physicians

will not be paid by the insurance company." No attempt was made to notify these physicians of the injury, the employee making no effort to secure their services. Dr. Cregg performed the operation. It is agreed his charge is reasonable. The question is whether under these circumstances the company is required, by the Workmen's Compensation Act, to pay for the services of a physician not furnished by it but selected by the employee.

Under the Workmen's Compensation Act the reasonable medical services required during the first two weeks after the injury are to be furnished by the insurer, the duty of supplying medical aid being imposed upon the insurance company with the obligation of paying therefor. The right to select the attending physician is given to it by the statute. It is evident, we think, that the Legislature in passing this act did not intend to give to the employee the privilege or right of selecting his own physician at the expense of the insurer. Under the amendment of 1914,[1] where a physician other than the one provided is called in case of an emergency, or for other justifiable cause, the insurer is required to pay for this service if in the opinion of the Industrial Accident Board the charge is reasonable and the cause of employment justifiable. The purpose of the Legislature in passing this amendment was not to deprive the insurer of the right to select its own physicians. By this change in the law provision was made for the case of emergency, — where there was imminent danger, where the suffering and pain were severe, where immediate attention was required and the services of the insurance physician could not be obtained in time to give relief. The amendment also was intended to apply to a situation where there was no actual emergency, but where the employee, acting as a reasonable man, would be justified in refusing the care of the physician selected by the company.

[1] St. 1911, c. 751, Part II., § 5, as amended by St. 1914, c. 708, § 1, is as follows: "During the first two weeks after the injury, and, if the employee is not immediately incapacitated thereby from earning full wages, then from the time of such incapacity, and in unusual cases, in the discretion of the board, for a longer period, the association shall furnish reasonable medical and hospital services, and medicines, when they are needed. Where, in a case of emergency or for other justifiable cause, a physician other than the one provided by the association is called in to treat the injured employee, the reasonable cost of his services shall be paid by the association, subject to the approval of the industrial accident board. Such approval shall be granted only if the board finds that there was such justifiable cause and that the charge for the services is reasonable."

There is nothing in the record of this case to show such an emergency or any cause which would justify a reasonable man in neglecting to seek the attention of the physicians named.

Even if on Saturday afternoon, when the pain was intense, an emergency then existed which made it prudent to call Dr. Cregg, and he could respond more quickly than the physician of the company, and the employee was justified in sending for him (which we are not called upon to decide), there is nothing in the evidence which discloses any such emergency existing on the Wednesday following when the services were rendered, and nothing is shown which would justify the employee in failing to secure the services of the physicians offered by the insurer.

In Panasuk's Case, 217 Mass. 589, it was held that the employee, an "illiterate foreigner who is unable to read, write or understand the English language," was not bound by a notice printed in English.

In the case at bar the employee could read and speak English; notices were conspicuously posted; we think he was charged with knowledge of them and their contents, and there is no evidence which justified him under the statute in neglecting to secure the services of either of the physicians named. (Daniels *v.* New England Cotton Yarn Co., 188 Mass. 260.) His ignorance of his rights and obligations under the Workmen's Compensation Act, cannot excuse him from compliance with its terms. (McLean's Case, *ante*, 342.)

Decree reversed.

CASE NO. 1570.

DOMENICK LOMAGLIO, *Employee.*
SHAPIRO & PRITZKER, *Employer.*
ROYAL INDEMNITY COMPANY, *Insurer.*

ABLE TO EARN. MALINGERING. IMPARTIAL PHYSICIANS FAIL TO FIND EVIDENCE OF INCAPACITY. STRONG EVIDENCE OF EXAGGERATION AND MALINGERING. EMPLOYEE REFUSED TO ACCEPT WORK WHICH HE COULD PERFORM. CLAIM DISMISSED.

The employee had received an injury by reason of the puncture of the ball of his left thumb by a nail on July 10, 1914, and had been paid compensation to Jan. 8, 1915. He also claimed that his shoulder had been injured. Impartial physicians reported that they could find no evidence of disease or injury in the shoulder, and that there was strong evidence of exaggeration and malingering on the part of the employee. He was offered work of any kind that he could perform, but did not call upon his employer to attempt to perform the work offered.

Held, that the employee was not entitled to compensation.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Domenick Lomaglio *v.* Royal Indemnity Company, this being case No. 1570 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, representing the Industrial Accident Board, chairman, James J. Burns, representing the employee, and Harold J. Quinlan, representing the insurer, heard the parties and their witnesses at the Board Room, New Albion Building, Boston, Mass., on Wednesday, Feb. 3, 1915, at 10 A.M.

Domenick Lomaglio, the employee, did not appear and was not represented. Arthur H. Stetson appeared for the insurer. The Board appointed J. J. Burns to serve as arbitrator for the employee.

Domenick Lomaglio claimed continuing incapacity on account of an injury he received while carrying lumber on July 10, 1914, by reason of the puncture of the ball of his left thumb by a nail; he also claimed injury to his shoulder. It was agreed that his average weekly wage was $12.

The evidence showed that this employee, Domenick Lomaglio, sustained an injury which should have incapacitated him for only a short time, but that he had been paid compensation up to Jan. 8, 1915. During the period from the middle of August to Jan. 8, 1915, he had been examined by various physicians, among whom were Dr. L. R. G. Crandon and Dr. Francis D. Donoghue, as impartial physicians appointed by the Board.

The alleged injured shoulder had been examined by X-ray by Dr. Arial W. George, who reported, "I find no evidence of disease or injury in the plates made of the shoulder."

Dr. William J. Daly examined the employee, at the request of the insurer, on Jan. 9, 1915, and testified as follows, giving a detailed account of such examination: The doctor stated that the result indicated "not only exaggeration but malingering," and that there was no reason why the employee should not be working. He said also that the injury to the thumb would have no connection whatever with the alleged condition of the shoulder, and that if it were a neurotic condition — functional neurosis — atrophy from disuse would be apparent, and the employee had none.

His former employer, Mr. Shapiro, testified that he was willing to give the employee work, even lighter work, such as sweeping floors and cleaning up, and had told him to come in to see him, but he had not come. Miss Williamson, of the office of the insurer, stated that the employee had worked since the accident for an Italian for about a week, at the rate of $12 a week.

The committee finds, upon all the evidence, that all incapacity for work on account of the injury sustained by said employee, Domenick Lomaglio, on July 10, 1914, ceased on Jan. 8, 1915, the date upon which the insurer stopped the payment of compensation, and that no further compensation is due said employee.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III., of the Workmen's Compensation Act, and the general provisions of said act and its amendments.

JOSEPH A. PARKS.
JAMES J. BURNS.
HAROLD J. QUINLAN.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, March 4, 1915, at 10 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that the employee, Domenick Lomaglio, was not incapacitated for work by reason of any condition due to the injury, or otherwise, at the date of the hearing before the committee of arbitration, and that none of the examining physicians including two impartial physicians, could find any trace of disease or injury at the time their examinations were made. There was strong evidence of exaggeration and malingering on the part of the employee, and noticeable failure on his part to co-operate with his employer, who offered work of any kind that he could perform, such as sweeping and cleaning floors. The employee did not call to attempt to perform the work offered.

The Industrial Accident Board finds, upon all the evidence, that the employee, Domenick Lomaglio, is not incapacitated wholly or partially by reason of the personal injury received by him on July 10, 1914, and that all incapacity for work due to said injury ceased on Jan. 8, 1915. The insurer, having paid compensation to said date, is not required to pay any further compensation to the employee.

FRANK J. DONAHUE.
DAVID T. DICKINSON.
DUDLEY M. HOLMAN.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE NO. 1571.

MINNIE PIKE, *Employee.*
GENERAL ELECTRIC COMPANY, *Employer.*
MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

CHAIN OF CAUSATION. DISEASE. EMPLOYEE WAS INCAPACITATED FOR WORK BY GRAVES' DISEASE. NO RELATION TO HER EMPLOYMENT. CLAIM DISMISSED.

The record shows that the employee was suffering from Graves' disease; that she showed symptoms of this disease a long time prior to the occurrence of April 15, 1914; and that this disease was not caused by conditions peculiar to her employment or by the alleged injury of April 15, 1914.

Held, that the employee was not entitled to compensation.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Minnie Pike *v.* Massachusetts Employees Insurance Association, this being case No. 1571 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, J. Frank Williams, representing the employee, and Ralph C. Bush, representing the insurer, heard the parties and their witnesses at City Hall, Lynn, Mass., on Wednesday, March 17, 1915, at 1.30 P.M.

John M. Cashman appeared as attorney for the employee, and John W. Cronin as attorney for the insurer.

The issue in this case is whether or not the illness from which the claimant is suffering was caused by or arose out of her employment, which the insurer denies.

The committee of arbitration visited the home of Miss Minnie Pike, as she was unable to attend the hearing held at the City Hall.

Minnie Pike testified as follows: —

I worked for the General Electric Company running a machine that needed to be run by power, sewing heavy canvas, and I was running this machine on April 15, 1914. I went to work on April 15 and my foot slipped off the pedal. I collapsed about 1.30 and was brought home at 4.30. I had been employed with this company previous to this time, and was engaged in the work of running a tubing machine, making small paper tubes. As a result of this accident I went to see Dr. Mullen. I saw him two or three times a day for the first two or three days. My general condition of health previous to this accident was good. I then weighed about 130 pounds and now weigh about 110. I never had any cause to consult a physician previous to this accident. I have done no work since then, and my wages were $8.40 a week — general wages. Clifford Huggin was my boss, and I told him that the doctor had told me not to do that work when he came to see my mother. Dr. Mullen told me that I should not work so hard on the machine. This conversation between Huggin and me took place the same day of the accident. The morning of the day the accident happened Dr. Mullen told me not to work so hard. He was up before I went to work that morning. I was feeling all tired out, could not sleep or eat. I felt this way about two or three weeks before the accident, but I had never mentioned it to the doctor before this morning. I had my trouble at the plant at noontime after dinner. I worked during the morning and came home to lunch; then I went back to work again. I was working when my foot slipped on the treadle. I felt a sharp pain in my foot and fell. I was taken to the rest room, and that is all I knew. I did no more work that day. I was brought home. Dr. Mullen then treated me. I had taken no medicine before this time. I had never had any injury or sickness before, except measles and colds. I am sure of this. I fell downstairs the first year I worked at the General Electric, which was reported to the company. The injury was on the other leg, the right. The doctor looked at it and applied some medicine to it. The doctor treated my left foot after the accident. It was the ankle of my foot that was injured at the last accident. I had been doing the work at sewing canvas for about a month or six weeks before I collapsed. I had been working for four years in that room doing general work, but not any work on this kind of a machine. I asked the foreman if he would raise the price so I could make more money, but he said no. I only made $2 or $3 a week. He said I was not working hard enough. I never operated the machine with a motor. The motor was taken off. There were other machines in the room with motors. There was another machine, the same kind, which had a motor. I was making small paper tubes before I earned $2 or $3 a week. My work had been shifted. I was changed because there was no paper on the tubing; work was short. I have never had any doctor other than Dr. Mullen. My average weekly wage six weeks prior to this was $2 or $3.

The hearing was then adjourned to the City Hall.

Dr. John H. Mullen testified as follows: —

Miss Pike came to my office some time in April complaining of having met with an accident while at her work, suffering an injury to her foot, which was swollen and tender. I told her to go to bed. I attended her for about three or four weeks after that. In about a week she commenced to have nervous symptoms, and developed an enlargement of the thyroid gland of the neck, pulse varied from 110 to 150 or 160, even when quiet in bed. The enlargement of the gland continued, the eyes commenced to be prominent; she showed all the symptoms of exophthalmic goiter. My examination of her was an ordinary, external one. The leg showed a slight injury to the foot, — outbreak of the skin which quieted down in ten days. There are various causes of this disease; there are cases which are unquestionably due to shock and to severe strain, either physical or nervous, or to fright. Her mother spoke to me one evening and said her daughter was not feeling well — felt tired all the time. I took her pulse, which was normal and not extremely rapid. I asked her how long she had been on this machine, and she said she had been doing a new kind of work. I told her she would have to give up work on that machine for good. I think I attended her the first two weeks every day. I have made no notes, as I had no idea it would develop into this kind of a case. I make no notes on any of my calls. I was surprised to see her pulse jump to 140 when I took it after the accident, as I do not usually see a pulse jump so many beats after a slight accident. This is what brings it most prominent to my mind. About three or four weeks after the accident I told her married sister about her condition, and that I was going to treat her, and if it did not work that she would have to be operated on. There was simply a slight swelling of the foot from the outer part a little below the fibula. The swelling was probably the size of a half dollar, the same as any contusion might be from an ordinary blow. It was slightly black and blue. The skin was not broken over it. She complained of the foot. I then examined it more carefully and told her she might have had some slight dislocation of the small bones, but I thought it would remedy itself. That was the reason it was still bothering her. I should say there probably was a slight dislocation there at the time. It is very easy to dislocate these small bones, and sometimes impossible to tell without an X-ray. A flat foot is more or less a dislocation of all the bones of the foot. A real dislocation quite frequently will readjust itself without treatment. A great many people dislocate their arm and put it back again. Flat feet will cause a general swelling and will cause pain but not tenderness. Flat feet would not account for any of her nervous symptoms, and it would not accelerate or aggravate the Graves' disease in any way. A great many cases of Graves' disease come without any cause, and it cannot be caused from flat feet. Quite a few cases can be traced to some nervous disorder. There is usually some severe nervous origin back of it. I should not say that pains of this sort from flat feet would be apt to produce ner-

vousness. I do not think that Graves' disease needs any aggravation, and flat feet do not aggravate it. This disease starts in the thyroid gland. If this had started prior, I should feel the accident had nothing at all to do with it. I did not notice the slightest sign of this until some three or four weeks after the accident. I consider that her condition has progressed too far to be operated on. People do die with this trouble. When I was attending her mother I took the daughter's pulse and temperature. This was about two or three days before the accident. She is incorrect in stating that I saw her the morning of the accident, and I noticed this when she was making the statement, but her rapid heart beat accounts for this. The first signs of Graves' disease are enlargement of the thyroid gland and nervous tremors; then comes the rapid pulse and bulging eyes. At the time the mother was sick, the daughter's temperature was normal and pulse around 80 or 82. There was nothing at all the matter with her. She was feeling tired, generally played out. I simply told her she would have to go off that machine. I had never seen her before this time. This was in February, 1914. I am sure there was not more than one call made between the month of February and the time I was called to attend this girl after her collapse. If a person had Graves' disease, walking along the street he might collapse. Excitement is an adequate cause. The average pulse is 60 or 70. A pulse never gets down to normal in Graves' disease.

In answer to a question asked him — that assuming a person fell out of a chair while working at a machine, suffering at the time with flat feet and also a weak heart — the doctor stated that a slight fall from a chair would not be apt to produce Graves' disease, neither would a dislocated bone in the foot cause this disease.

Dr. Benjamin Ernest Sibley, a surgeon connected with the insurance company's hospital, testified as follows: —

I examined Minnie Pike on June 29, 1914. She came to the hospital with the history of her accident, — that her foot slipped on the pedal of the machine and she collapsed at that time. She complained that the foot had troubled her and that she could not work. I examined her feet. She had flat feet, both feet flat, but the left worse than the right. She then had signs of Graves' disease, pulse 144; a systolic murmur of the heart, tremor of the hands, prominence of the eyes, some enlargement of the thyroid gland, very nervous in her general manner, so that my diagnosis at that time was Graves' disease. I did not find any evidence of injury or dislocation at the time. A thyroid gland is a gland that lies about the base of the neck in front, which is below the thyroid cartilage which is called the Adam's apple. The gland and cartilage are absolutely distinct; that is, an enlargement of the gland would not mean an enlargement of the cartilage. I think it is an easy thing to fail in detecting an enlarged thyroid gland because it may be slight, or the enlargement may

progress backward under the muscles and tissues. I do not think there is any causal connection between her accident and the Graves' disease. My note at that time was, "I see no reason for attributing her present condition to the slight accident described." I have not changed my view since. I make notes of every case. I do not think an accident would have any bearing to Graves' disease, as this was too slight. It seemed to me too slight to have any appreciable effect. The medical duration of Graves' disease is many years. The disease does get better sometimes of itself; many times it gets worse. I should say she had had this disease probably several months, possibly five or six months, although I cannot swear to this. I cannot swear that she had these symptoms the day before, but I think she did. This looked to me like a case of several months' duration. I cannot tell you how many.

Dr. Frank E. Schubmehl testified that he had charge of the Emergency Hospital of the General Electric Company.

I examined Miss Pike Nov. 11, 1913. I found a girl with a rather pasty complexion, very prominent eyes, and I have no record of any other symptom. I do not know whether I observed anything further than that. Miss Roche, one of my first-aid women, brought her. Information was telephoned me April 16, 1914, as she had been sent home from the department. I made a diagnosis of possible Graves' disease at that time, as there were symptoms of the disease present. I never saw her after the first examination. The symptoms of Graves' disease are some enlargement of the thyroid gland, bulging of the eyes, increased pulse, very frequently, nervous symptoms. A person subject to great physical strain would not always have this disease, but it might follow. I take care of the medical and surgical cases of the company. I never make a record to jeopardize anybody. I am there to take care of the patient.

Mrs. Pike, mother of Minnie Pike, testified: —

My daughter's health was good before the accident, and she was fat, weighing 140 pounds. She had red cheeks. She only complained of a little cold previous to the accident. On April 15 she was brought home and I went right off for the doctor. I am sixty-three and my husband, who is living, sixty-four. We have had no sickness in the family or heart trouble. My daughter never complained of heart trouble or any disease previous to April 15.

Miss Mary Roche testified as follows: —

I am forelady at the General Electric Company, and I took Miss Pike to see Dr. Schubmehl. She told me she was not feeling well perhaps a month before, although I cannot exactly remember. This was before the time she saw Dr. Schubmehl. A great many times when I spoke to her about being away from her work she said she had a headache. She did, at one time when she wanted to go into the General Electric Mutual Bene-

fit, tell me her condition, saying that she had heart trouble and kidney trouble. This was a short while before she was taken out of the factory; perhaps it was a month, but not six weeks before. I have been forelady about fourteen years. Miss Pike has been with the company about five years. She asked to run this machine herself. She never made any complaints to me about the machine. We took her home the day she fainted, and her mother said, "I thought it would come to this."

Mr. Owen W. Leslie testified as follows: —

I am employed by the General Electric Company as fiber cutter, and also first aid of the gentlemen's department. I knew Miss Pike. It was either the morning of the day she fainted, or the morning before, that she came over to where I was and said she was not feeling very well. She said she had been to the doctor, and he told her that her blood was very thin and she had a leakage of the heart, or something of that sort; that he had ordered her to stay out of the shop.

Mr. Clifford Huggin testified as follows: —

I am employed by the General Electric Company as leading hand of the insulation work, which is the same department in which Miss Pike worked. On the day she was taken home she came to me and said she could not get her money on the machine. I tried to rectify the mistake. I started the machine myself, and then went over to the office telling her to fill the bobbin. When I returned I found her crying and asked her why she was crying, but she made no answer. I called Miss Roche's and Mr. Leslie's attention to this fact. She was running a small home type Singer sewing machine, which ran very easily.

The committee therefore finds, on the weight of the medical testimony, that Miss Pike is suffering from Graves' disease; that this disease was not caused by anything which arose in her employment; that she showed symptoms of this disease a long time prior to the incident of April 15, 1914; and that she is not entitled to compensation because she has sustained no injury arising out of and in the course of her employment which incapacitated her for earning wages. The committee further finds that nothing in her employment aggravated any pre-existing disease, as on the weight of the medical evidence Graves' disease cannot be aggravated or accelerated by any accident such as described.

DUDLEY M. HOLMAN.
RALPH C. BUSH.
J. FRANK WILLIAMS.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, May 6, 1915, at 2 P.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that the employee, Minnie Pike, is suffering from a condition known as Graves' disease, said disease having no causal relation to a personal injury arising out of and in the course of her employment. This disease was not aggravated or accelerated by reason of the conditions under which she was required to perform her work, or by a personal injury arising out of such employment.

The Board therefore finds, upon all the evidence, that the employee did not receive a personal injury arising out of and in the course of her employment, and dismisses her claim for compensation.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE NO. 1574.

JAMES KINGSTON, *Employee.*
CITY OF BOSTON, *Employer.*

ARISING OUT OF THE EMPLOYMENT. DISEASE. PNEUMONIA. EMPLOYEE, A GRAVE DIGGER, CLAIMS THAT PNEUMONIA RESULTED FROM EXPOSURE DUE TO HIS EMPLOYMENT. CLAIM DISMISSED.

The employee, a grave digger, claimed that while performing his duties between October 17 and 22, on account of the water and dampness in the graves, he got his feet wet and contracted pneumonia. The testimony of fellow employees showed that water does not lodge in the graves at the season of the year specified by the employee.

Held, that the employee was not entitled to compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of James Kingston *v.* City of Boston, this being case No. 1574 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, representing the Industrial Accident Board, chairman, James D. Grant, representing the employee, and John A. Brett, representing the employer, heard the parties and their witnesses at the Hearing Room, New Albion Building, Boston, Mass., on Tuesday, March 2, 1915, at 2 P.M.

James Kingston, employed as a laborer in the cemetery at Hyde Park, claimed that he got his feet wet between the 17th and 22d of October, 1914, which resulted in the contracting of pneumonia. No compensation was paid, the employer claiming that there was no causal connection between his employment and the incapacity resulting from the pneumonia.

James Kingston testified that between the 17th and 22d of October, 1914, he was engaged in digging a grave, and that, on account of the water and dampness in the grave, he got his feet wet, but felt no effects of the same until October 22, when, during the course of his work, he felt pain just below the left shoulder blade, and was compelled to leave his work. He was confined to his bed for thirteen weeks, with a severe attack of pneumonia, and is still unable to work on account of the condition resulting therefrom.

Leonard W. Ross, superintendent, and Frank Donovan, custodian of the cemetery, as well as Dennis Sullivan, Austin Kelly, Patrick Mack and Daniel H. Dolan, fellow workmen of the employee, testified that there is never any water in the graves in October, the season of the year specified by the employee.

Dr. David E. Hanlon, who treated the employee, testified that he was still unable to work as a result of the pneumonia.

The evidence shows that the employee, James Kingston, was not obliged, by reason of the nature of his employment, to work under conditions which peculiarly exposed him to the

danger of contracting pneumonia. He was not required to work in water, as testified by him, the evidence of fellow workmen showing that there was no water in the graves on or about the dates specified by the employee, between Oct. 17 and 22, 1914, nor was there any water in the graves at that season of the year.

The committee of arbitration finds, upon all the evidence, that the employee, James Kingston, did not receive a personal injury arising out of and in the course of his employment, the pneumonia which he contracted in October, 1914, having no causal relation to the conditions under which he was required to perform his work as a laborer. Therefore, the claim for compensation of the employee against the city of Boston is dismissed.

JOSEPH A. PARKS.
JOHN A. BRETT.
JAMES D. GRANT.

CASE No. 1582.

CHRIS ANDRACTAN, *Employee.*
CHARLES H. COBB, *Employer.*
UNITED STATES FIDELITY AND GUARANTY COMPANY, *Insurer.*

ARISING OUT OF EMPLOYMENT. OPERATING MACHINE OF ANOTHER. PROCEEDINGS PROSECUTED WITHOUT REASONABLE GROUNDS. EMPLOYEE OUTSIDE SCOPE OF EMPLOYMENT. COSTS OF HEARING ASSESSED ON EMPLOYEE.

The boy had two fingers of his right hand cut off by a dinking machine during the noon hour. He told several conflicting stories as to how the accident happened. The first story told was that he was showing another employee how to operate the machine. His own job was blacking heels.

Held, that the accident did not arise out of the employment.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Chris Andractan *v.* United States Fidelity and Guaranty Company, this being case No. 1582 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, Peter Stafidas, representing the employee, and James Otis Porter, representing the insurer, heard the parties and their witnesses in the Aldermanic Chamber of the Lynn City Hall, Monday, March 29, 1915, at 11.30 A.M.

James P. Parker appeared as counsel for the insurer. The employee was not represented by counsel.

The employee, a boy seventeen years of age, while at work in the shoe factory of Charles H. Cobb at East Lynn, on July 10, 1913, at 12.30 P.M., had two fingers of the right hand cut off above the first joint. The question was whether the injury was one arising out of and in the course of his employment.

The evidence showed that the boy had told various conflicting stories, as to how the accident occurred, to fellow employees, to the insurance company, to the firm of attorneys who first took his case, only to drop it later, and to the Industrial Accident Board, with whom he conferred about the accident. Although informed by the Board on Aug. 4, 1913, that he should file a claim for compensation on a blank for the purpose which was sent to him, no such claim was ever filed, and no request for arbitration was made until Jan. 26, 1915, eighteen months after the accident, and after the only witness had disappeared for parts unknown.

At the hearing the boy testified that during the noon hour, on the day of the injury, he saw George Laganas, a fellow countryman (whom he had not seen since leaving Greece, and who had just come to work for the concern) standing across the room from where he, Andractan, worked, and hurried to greet him. On his way he passed the dinking machine. He slipped, and to save himself threw out his hand. In some way the beam came down and cut off his fingers. He did not know just how the accident could have happened. A diagram showing the room, the location of the machine, his own position and that of Laganas when he first saw the latter, and the positions of both when the accident happened, were identified by the employee as being correct. Andractan stayed in the room noons to eat. His employer was George McCarry, who had a contract for certain work with the Cobb people.

Lewis D. Soule, foreman of the room in which the boy was employed, testified that Andractan had been repeatedly warned not to touch machinery. His own job was blacking heels, but he was in the habit of fooling around machinery, being very ambitious and anxious to learn. The power was off when the accident happened, but the beam on the machine could be brought down once, without power, by a foot treadle which one had to stand on a raised platform to operate. Andractan used to work for a contractor in the shop for $5.50 a week, but since Aug. 16, 1913, when he came back to work, he had been employed by Mr. Soule at $5 a week.

If Andractan was in the position where he said he was when he saw Laganas he could not have seen the latter, as the stock room cut off the view. If he took the course he said he did to reach Laganas he could not have passed anywhere near the machine.

Michael Pappas testified that he saw Andractan shortly after the accident, and that the latter told him he had been showing Laganas how to operate the machine when the beam came down and his fingers were cut off.

John J. Coker of the insurance company testified that this was the same story he told when he came to the office of the company on July 21, 1913.

The committee of arbitration finds, upon all the evidence, that the latter story is the true one, and that, therefore, the employee did not receive an injury arising out of and in the course of his employment. The committee further finds that in bringing and prosecuting these proceedings the employee acted without reasonable ground, and with full knowledge that he was so unreasonably acting, and it therefore assesses upon him, under the provisions of section 14 of Part III. of the act, the whole cost of the proceedings.

FRANK J. DONAHUE.
JAMES OTIS PORTER.
PETER STAFIDAS.

CASE No. 1583.

CATHERINE FERRICK, WIDOW OF THOMAS FERRICK, *Employee.*
CITY OF NEWTON, *Employer.*

ARISING OUT OF THE EMPLOYMENT. DEATH RESULTS FROM THE INJURY. FRACTURE OF SKULL. DEATH RESULTS ALMOST IMMEDIATELY. COMPENSATION AWARDED WIDOW.

The employee was engaged as a laborer and was performing his duty at the time of the injury. He was at work in the yard of the Burr School, and, due to the slippery condition of the lawns, slipped and fell. He struck on his head and fractured his skull. Death ensued almost immediately.

Held, that the widow was entitled to compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Catherine Ferrick, widow of Thomas Ferrick, *v.* City of Newton, this being case No. 1583 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, representing the Industrial Accident Board, chairman, Thomas F. Murphy, representing the dependents, and Pitt F. Drew, representing the employer, heard the parties and their witnesses at City Hall, Newton, Mass., on Friday, Feb. 19, 1915, at 2 P.M.

The question at issue was whether or not the employee, Thomas Ferrick, was fatally injured by reason of a personal injury arising out of and in the course of his employment. There was no question as to his average weekly wages, which were agreed upon as $12.78.

Dr. George L. West, medical examiner for the district, testified that he viewed the body of the deceased at 5.50 P.M. on the day of the injury, discovering a quantity of blood flowing from the left ear and a superficial wound of the scalp in the middle of the back of the head. He ordered the body kept in the morgue. On December 10 he made an autopsy and found a fracture through the base of the skull, beginning at the bony part of the ear on the left side, extending forward into the middle depression of the skull about an inch and a half; and

from that same point, from the bony portion of the ear, along the bony roof covering the middle ear, outward and a little forwards, towards the groove through which the optic nerve runs, and a third branch of the fracture from the bony part of the ear backwards, horizontally along the line of the middle portion of the back of the head. There was no stopping up of the blood vessels of the heart, which is at times a cause of sudden death. That was absent. He diagnosed the cause of death as fracture of the skull. He had performed the autopsy in his official capacity and in accord with his duty to clear up the matter of the cause of death. He had not found in the brain or anywhere else anything that would lead him to believe that the cause of death was anything other than the fracture of the skull, resulting from the fall. His examination had been a thorough one.

Dr. Henry F. Keever, the family physician, testified that he had practiced in the city of Newton since 1908, and knew of no illness that the deceased had had.

Catherine Ferrick, the widow, testified that she saw her husband at noon; and he appeared to be in his usual good health; he was always well; "he could not be any better." She could not recall any time when he had been ill; she would have called Dr. Keever had he been ill; he had never required the services of a physician; he had not lost any time from his work on account of illness; he had never had any dizzy or fainting spells in the house or elsewhere.

Thomas Ferrick, son of the deceased, whose statements were corroborated by his brother, John Ferrick, testified that his father was not addicted to the use of liquor in any form, although he was not a total abstainer. He did not remember any illness that had ever incapacitated his father for work; he might have had a headache or something like that, but he did not lose any time.

James Fessenden testified that he was working with the deceased on the day of the injury in the yard of the Burr School, straightening up the lawn. The ground was very icy — very slippery on that day. He was working not far from Mr. Ferrick, with his back partly toward him, and heard the scuffling of shoes on the ice; he looked around quickly enough

to see Mr. Ferrick fall and strike his head. He had been using a shovel or spade on the lawn, and it was only three or four minutes after Mr. Fessenden saw him working that he saw him fall.

Richard Gorman and William McGough corroborated Mr. Fessenden's testimony in regard to the manner in which the employee received the fatal injury.

Gordon L. Kennedy, who lives on property which backs up on Ash Street, testified that he was sitting at the back of the house, facing the school ground, and happened to be looking that way. He saw a quick movement, and as soon as he could focus his eyes on the spot, saw Mr. Ferrick lying on the sidewalk. He had been reading, and had not been watching the work especially; it was the fall that attracted his attention.

The evidence shows that the death of the employee, Thomas Ferrick, resulted from a personal injury arising out of and in the course of his employment by reason of a fall on the lawn in the yard of the Burr School, where he was performing his duties as a laborer. The employee's skull was fractured and death ensued almost immediately. The report of the medical examiner shows that the cause of death was a fractured skull, and since the fractured skull resulted from a personal injury received by the employee while fulfilling his contract of hire for the city of Newton, the employer is required to pay compensation to the widow and claimant, Catherine Ferrick.

The committee of arbitration finds, upon all the evidence, that the employee, Thomas Ferrick, received a personal injury, which arose out of and in the course of his employment, on Dec. 9, 1914, said injury causing the death of the employee; that Catherine Ferrick, the widow of the employee, living with him at the time of the injury, is conclusively presumed to be wholly dependent upon him; that there is due the widow from the city of Newton a weekly payment of $8.53 for a period of four hundred and sixty-nine weeks, the total amount due under this decision being $4,000.

JOSEPH A. PARKS.
THOMAS F. MURPHY.
PITT F. DREW.

CASE No. 1589.

MARY MCLEAN, SISTER AND ALLEGED DEPENDENT OF MICHAEL MCLEAN (DECEASED), *Employee.*

ALEX FRASER, *Employer.*

CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

DEATH RESULTS FROM INJURY. DEPENDENCY. NEXT OF KIN. AVERAGE WEEKLY WAGES. RELIABILITY OF EVIDENCE. CLAIMANT PARTIALLY DEPENDENT. EMPLOYEE CONTRIBUTED $8 REGULARLY. OTHER MEMBERS OF FAMILY CONTRIBUTED TO FAMILY FUND. UNION RATE OF CARPENTERS ACCEPTED AS BASIS OF COMPENSATION PAYMENTS. INSURER'S REQUEST THAT CLAIMANT'S TESTIMONY BE REJECTED AS UNRELIABLE REFUSED. COMPENSATION AWARDED.

The decedent contributed an average weekly sum of $8 to the support of the claimant, who also received contributions from another brother and a sister. There was a lack of evidence as to the amount received as wages by a carpenter, and the record showed that the union rate for carpenters was $24.20. There was some evidence as to the habits of the employee as to intoxication, and the insurer made a request that the committee reject all the testimony in behalf of the claimant as untrustworthy.

Held, that the claimant was next of kin and partially dependent upon the decedent for support.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Mary McLean, sister and alleged dependent of Michael McLean, deceased, *v.* Contractors Mutual Liability Insurance Company, this being case No. 1589 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, Francis X. Quigley, representing the dependent, and Herbert L. Barrett, representing the insurer, heard the parties and their witnesses in the

Hearing Room of the Industrial Accident Board, 1 Beacon Street, Boston, Mass., on Friday, April 2, 1915, at 10 A.M., and Monday, May 3, 1915, at 10 A.M.

Harold J. Quinlan appeared as counsel for the dependents, and Norman F. Hesseltine appeared as counsel for the insurer.

The deceased, while employed as a carpenter by the insured on Jan. 4, 1915, at 31 Wenham Street, Forest Hills, Mass., was killed by a fall from a staging. It was agreed that death occurred in the course of and arose out of the employment.

The question before the committee was as to the dependency of the claimant.

The following is a report of the testimony taken at the first hearing on April 2: —

Mary McLean, the claimant, testified that she lives at 55 Market Street, Brighton. The dead brother used to come over nearly every week. If he did not come over Saturday afternoon at 4 o'clock he would be over at 9 o'clock Sunday morning. She was not able to work herself and was depending on his money. He always gave her $8 regularly, and sometimes $9, and if he failed some weeks to give her $9 he would give $6 and $7, and then he would make it up when he got a full week. Mary had no other means of support. Her sister Ellen gave her $3 some weeks, and other weeks $4. If Ellen got a full weeks' work she would give Mary $5, which was for Ellen's board and expenses and not for Mary's support. Some weeks Ellen would not make a full week's pay, and she would give Mary what she could. When she made a full week she would give $5. This was once in a great while. The money her sister gave her she used for the house. She agreed to board Ellen for $3.50 if Ellen could not afford to pay any more, but Ellen knew she had a hard time getting along, and sometimes would give her $5 and sometimes more. The money that Michael gave went to run the house, to pay the rent and to pay for coal. Her brother Roderick paid for his board and room when he worked. Roderick is not well; he has some trouble with his back and works but very little. When he works he gives Mary all he can.

Cross-examined, Mary testified that she is fifty-four years old; that her sister Ellen is thirty-eight or thirty-nine years

old. She has three brothers living, the oldest, Hector McLean, lives out in West Roxbury; he is about fifty-eight; married, and has a big family. She does not see him very often. She is the next in age to Hector. The next oldest brother is Murdock, who lives in Roslindale. He has a wife and family. There are twelve in his family. Roderick is about thirty-nine and lives with Mary, and is the youngest brother. He contributes when he works. He probably works a full week in two months. Mary herself has not worked for seventeen years. She has been keeping house for the family in Brighton since that time, at 21 School Street, and since a year ago last Thanksgiving, at 55 Market Street. She lived in the School Street house about thirteen years, and did not earn any money during that period. She admitted that three years ago last September she worked for a family by the name of Sebastian in West Acton, and earned $5 a week there. This was from May, 1913, to September, 1913. She had forgotten all about this. Her memory is not very good in such trouble as this. She was never in a place like this before. Her memory is not bad about the $9 a week. Michael knew that she was not able to work. He was killed on the fourth day of January last. The Saturday before that he had his supper with them at the house in Brighton. That week he gave her $7, as he only worked four days. The week before that he gave her $8. If he could not give $8 or $9 every Saturday he would make it up the next week. The Saturday before he was killed he came over at 4 o'clock. On December 19 he gave her $9. He put a $5 bill and two $2 bills on the table. She used it to run the house; to pay her bills; grocery bills, rent and to get coal. She could not remember just when he paid her any money before December 19. She was not keeping track of the dates. He paid her some money about the middle of December, the exact date she could not tell. He gave her some money about the second week in December. She did not know how long he was working for Mr. Fraser. She knew he could not work much during the cold weather. She did not know of any place where he worked in 1914, prior to the time that he went to work for Mr. Fraser. She did not ask him the names of the people he was working for. When he came to see her he would sit down and talk with her; they

talked over their own affairs. Her brother might take a drink like another man, but he was all right when he came to see her, and was always able to take care of himself. She never knew that he had been convicted a number of times for drunkenness. She never knew he was sentenced to the State Farm for drunkenness. This is the first time she ever heard of it. She did not know that his intemperate habits were such that he had difficulty in getting a job; on the contrary, lots of people told her he never had any trouble getting work. If he knew he was going to get through with a job one day or one week he had another job to go to. She did not believe that Michael McLean was away from her house long enough for anybody to tell such things about him. Her brother Roderick is not working just at the present time. Roderick would work for half a day, and when he was able to work would bring in what he could. He is not a union man. Before she went housekeeping she worked away up in North Cambridge; that was more than seventeen years ago. She could not recall if the Sebastian family was the only place she had worked within the last seventeen years. She thought she had worked in no other place between that time and when she worked in North Cambridge. She never worked for a man named Dennison at Manchester, or never lived there. Dennison was the name of the family in North Cambridge that she worked for. She was with them for three years; it was not five years, it was three years and some odd months. She thought that was about fourteen years ago. She never was a housekeeper at 20 Warren Street, Roxbury. There are four rooms in the house where she lives now. She had been living right along in the same house since Michael was killed. With the wages of her sister and brother they have been keeping up as well as they can.

In redirect examination the claimant testified that Michael did not live with them because it was not convenient for him on account of his work. The time she worked in West Acton has never been called to her mind since her brother's death until to-day. When she stated she did not remember her brother paying her any money prior to December 19, she meant she did not remember any specific date.

Questioned by the committee she testified that she paid

$10 a month rent. Her grocery and provision bill would be about $8 some weeks. It is five weeks now since her brother Roderick worked at all. He probably works two days steadily, then has to go home and go to bed. He does not average $2 a week the year around. If he works a full week he gives her $6. That may happen once a month, and other weeks he does not give her any at all. When she worked at West Acton the house on School Street was closed up.

Ellen McLean testified that she lives at 55 Market Street, Brighton, and is a sister of Mary McLean. She would see her brother Michael come over to the house on Saturday afternoon, and if he did not come Saturday afternoon he would come Sunday morning between 9 and 10 o'clock, and give Mary $8. The last Saturday he was there he left $7; that was the second day of January. In six months Ellen saw him there four times, and each time he gave money to Mary. One time he would give her $6 and another time $8. She, herself, used to give Mary $3.50, $4 and $5. She had not been working very steadily the last six months. Some weeks she worked four days and some weeks five days. She was working on carpet lining in East Watertown.

Cross-examined, Ellen testified that she would go to work at 7 A.M. and get back at 5.30 or 6 P.M. She would take her dinner with her. Saturday she left work at 12.30. They live in the upper floor of a two-family house. There are four rooms in their flat, a kitchen and three bedrooms. Roderick occupies one bedroom and Mary and Ellen the other. On January 2 Michael came in between 4 and 5 in the afternoon, and left about 8.15 P.M. He had supper with them. He gave Mary $5 and $2. Mary was sitting at one end of the table and he at the other, and he passed it right over to her. This happened at the supper table. It must have been the second Saturday before that that Ellen saw him giving the money to Mary. Sometimes he would give $5. When he gave the money two weeks before January 2 it was $9. He was over the Wednesday before Christmas. He did not say anything about the money being a Christmas present. Before that he was over one day during the week and left some money. Ellen was not home that day, but saw the money. She knew there was no

money in the house when she went to work, but the money was on the shelf when she returned. There was $6 there at that time, a $5 bill and $1 bill. It was up in the closet on a shelf. That was the week before December 19. She could not remember exactly any other time that Michael left any money, as he was so often over at the house, especially when she would be working. There was another time, about two weeks before the last time she described, when he was there on a Tuesday and left some money. She did not see him, but the money was in the house. Michael was her favorite brother. She would know when he was working and when he was not. He used to tell her the names of the people he was working for, but she could not remember their names. She remembers the last name was Fraser, and also remembers a McPherson at Forest Hills whom he worked for within a year. On the Tuesday Michael was over she saw $6 that he left. She did not know how many weeks Michael worked in 1914. She did not know that his intemperate habits interfered with his work. She never knew he lost a job. She knew he used to take a drink, but was always able to take care of himself. She never saw him drunk. This was the first time she ever heard he had been convicted of drunkenness. There was no definite amount agreed upon between Mary and her as to what she should pay for board. When she gave money it was for running the house, and when Michael gave money it was for running the house. Michael gave the money to Mary, and she never used it for anything but running the house.

Questioned by the committee, Ellen testified that the money that she gave Mary was never more than enough to pay her board. Her employment is not very regular. The last three months she has been working for the Boston & Albany Railroad. She is only a spare hand, and only works four or five days, and sometimes, but very seldom, six days a week. Roderick does not earn enough money to pay his board. Ellen now gives Mary a little more than she did before Michael died. She gives her $7 or $8 a week now because she is earning more and has a steady job. She has had a steady job during the last three months. Before that she did not, and used to loaf

quite a lot. She gives this extra money because her brother does not give anything.

Roderick McLean testified that he is a carpenter by occupation, is a brother of the deceased Michael McLean, and lives with the two previous witnesses at 55 Market Street, Brighton. He saw his brother over at the house nearly every Saturday afternoon, and saw him give Mary $7, $8 and $9. If he did not come Saturday he would come Sunday morning between 9 and 10 o'clock. He would give Mary $7 or $8; he would give it to her at the table. Some weeks he would skip; if he did not have it he could not give it. His sister was depending on Michael's wages. He, himself, has trouble with his spine. He has had an accident. Mr. Hesseltine summoned him here this morning.

Questioned by the committee, Roderick testified that Ellen could not give Mary much money; that it was not like what Michael would give her. He, himself, has not done any work now for five weeks He is a carpenter by trade, and earns 55 cents an hour when working. He gets union wages, — 55 cents an hour on a forty-four-hour week basis. Those are the regular wages of carpenters. He does belong to the union and Michael belonged to the union.

Cross-examined, Roderick testified that he does not belong to any union now; that it is three years since he belonged to a union. Michael belonged to the local out in Roslindale. Michael worked pretty steadily in 1914. He could not tell exactly how much time Michael lost; he did not loaf over a week altogether, or a couple of weeks. He is pretty sure of this because Michael was coming over to the house with his money to Mary. Roderick did not know where Michael worked. He knew that he worked for a firm at the corner of Castle and Tremont streets in 1914, in the fall. He did not know how long he worked there, but he knows he was there at least two weeks. He would not have any conversation with Michael as to where he was working. He saw Michael give money to Mary lots of times, as often as twenty, and he would not be in the house every time Michael was there. Michael would be over on a Saturday or Sunday. He knew that Michael was over January

2, the Saturday before he was killed, because he was there that time and saw Michael give Mary $7. The time before that he gave $9. Other times it would be between $7 and $9. The only dates he could remember definitely were January 2 and December 19. He knew his brother used to take a drink. He takes one himself. Michael was not a hard drinker; he never knew him to be convicted for drunkenness; he never knew him to be convicted and sent to the State Farm in 1914. He never talked this case over with the attorney for his sister; he had never seen the man but once before. He knew that Michael earned $24.25 every week he worked because he would not work for less.

Questioned by the committee, he said that he meant Michael got 55 cents an hour. He did not mean he averaged $7 or $8 a week. He turns in $1, $2, $3, $5, $6 and $7, averaging in the year about $2. He requires medical attendance now for his injury, and has to see a doctor every little while.

Mary McLean, recalled by the attorney for the insurer and asked if she did not remember that the Saturday before her brother's death he gave her $5, said that she remembered he gave her $7, and remembered it well. She did not remember that he gave her $5, and she chased after him and returned it to him. She was surprised at this statement; she does not see where all this talk is coming from; it is not so. She is positive that she did not return the money to him.

At the hearing on May 3 John Wragg, called by the insurer, testified that he is a police officer of the city of Boston, and knew Michael McLean; that McLean was drunk practically every Saturday night. He saw him every other Saturday; he always had two or three fellows with him. As to Michael spending money freely, he did not know anything about that. On two occasions he locked him up for drunkenness.

Questioned by the committee, Mr. Wragg testified that Michael McLean was released both times; he served no time.

Frank V. Sullivan, called by the insurer, testified that he is a police officer of the city of Boston, and was on the beat where Michael McLean lived. He had seen Michael drunk on Saturday afternoons three or four times. He thought he arrested him about three times for drunkenness.

Questioned by the committee, Mr. Sullivan testified that the only time Michael McLean served in jail was awaiting trial on a case Mr. Sullivan had. He had known McLean for eight years. He was on the beat three or four years, and in that time he saw him drunk three or four times. The last time he arrested him was a year ago on a Saturday afternoon, when he took him out of a barber shop. McLean lived at 1280 Columbus Avenue, boarding with an Italian family; then he lived with a family at the junction of Roxbury Street and Hanley Square.

Gustave Seiferth, called by the insurer, testified that he lives at 1411 Tremont Street, Roxbury, and had been the landlord of Michael McLean since last August, when his mother died and he took charge of the house. McLean paid his lodging the Saturday before he met with the accident. At that time he told Seiferth that he thought he would be out of work the next week, and would have to go to live with his sister.

Questioned by the committee, Seiferth said that McLean stated to him that it was getting cold, and he thought he would have three or four days' more work, and after that he would have to go live with his sister. He never asked McLean about his money; McLean paid his way, and that is all he had to do with it.

Cross-examined, Mr. Seiferth testified that during the time he was his landlord he paid his rent regularly. He could not say that he ever saw McLean under the influence of liquor. He had talked this matter over with Mr. Swift of the insurance company. Mr. Swift came to his house one night within a month before; he saw him twice at the store and once at the house. He told Mr. Swift the same story each time; that was all there was to say.

Questioned again by the committee, Mr. Seiferth testified that McLean paid $2 a week rent, and lived with him two and one-half or three years.

Frank McLeod, called by the insurer, testified that he was employed by Alexander Fraser at the time of the death of Michael McLean. He knew McLean for a short time, and had never worked with him until they worked together on the job where McLean was killed. The day McLean was killed he told

Mr. McLeod that he had been out to his sister's place on Saturday, and said he offered her $5, and that his sister said she did not want it. He then left it on the shelf in the kitchen, and when he was going away she gave him the $5. He said he was going to live with his sister the following week. He said there was a little girl there, and he liked the little girl. He thought McLean said this was an adopted girl. McLean did not say anything about his sister saying he would be out of work and would need the money; nothing along the line the counsel for the insurer suggested. McLean said he would be better off if he were at his sister's. He spoke about it being so far to come to his work. McLeod responded that he lived in Roxbury and worked in Brighton for a year, and it did not take very long to travel out there. McLean did not state any reason as being given by his sister for returning the $5. McLeod talked the incident over with the men on the job the day that McLean was killed, and he told Mr. Swift of the insurance company about it before the last hearing.

Cross-examined, McLeod testified that he had known McLean for seven or eight years, but never worked with him until this job on which he was killed. There was no reason for McLean making this statement to him about his sister returning the $5. He never knew McLean to be short of money. He never knew him to be out of work; he was a man who could always get work. He never borrowed money from McLeod; he never said anything about his sister being dependent upon him. McLeod did not think he ever knew that McLean had a sister until the day of his death, when he spoke about it. He knew nothing of McLean's family affairs.

Fred W. Dahl, called by the insurer, testified that he had the time book of the Boston & Albany Railroad yards on Exeter Street where Ellen McLean has been working. He is clerk in the foreman's office on Exeter Street. Up to April 4, 1915, the time book was kept by one Fitzgerald, and on April 6 Dahl took it. Ellen McLean went to work there on Aug. 3, 1914, and the week closed on Aug. 7, and during that week she worked three days and earned $4.47, continuing as follows: —

Week ending —	Days.	Earnings.	Week ending —	Days.	Earnings.
1914.			December 25,	6	9 79
August 14,	4	$5 96	December 31,	6	9 81
August 21,	6	8 94	1915.		
August 28,	5	7 45	January 8,	2	3 44
September 4,	6	8 94	January 15,	6	9 80
September 11,	6	8 94	January 22,	6	10 06
September 18,	5	7 58	January 29,	6	9 60
September 25,	6	9 62	February 5,	6	10 16
October 2,	6	9 76	February 12,	6	10 18
October 9,	5	8 09	February 19,	5	8 95
October 16,	6	11 06	February 26,	6	11 85
October 23,	6	10 27	March 5,	6	9 94
October 30,	6	9 73	March 12,	6	10 45
November 6,	6	9 84	March 19,	6	10 32
November 13,	6	9 59	March 26,	6	10 25
November 20,	6	9 65	April 2,	5	8 82
November 27,	6	9 85	April 9,	6	11 51
December 4,	6	9 87	April 16,	6	8 70
December 11,	6	9 80	April 23,	6	9 93
December 18,	6	9 59	April 30,	6	10 28

She is a pieceworker. He did not know what her first employment was when she went to work there, and does not know whether she is engaged as a spare hand or a regular. He was working at Allston at the time she was employed. She is a car cleaner. There are about fifteen women employed in that particular line of work. He would say that the average wage of the women out there was about $9.25.

Cross-examined, the witness testified that what Miss McLean earned depended on how fast she worked, how many friends she had, and one thing and another. The more friends one has the less money one earns.

Ellen McLean recalled, testified that she last paid money to her sister the week before last on a Tuesday night, when she gave her $5. She was engaged by the Boston & Albany as a spare hand. In October Mrs. Bennett left, and she was given a regular place. After Mrs. Bennett left she worked full time. Asked if she did not state at the other hearing that she worked

four or five days a week, she said that was so when she first started there. She has been paying her way at her sister's for the last twelve years; ever since she has been boarding with her; paying every week. The most she paid her since she worked for the Boston & Albany was $6. She used to give her $3 or $4. Asked if she did not testify at the previous hearing that she now gives her $7 or $8 a week, she said that she did, but does not now know whether it was true or not; she thinks she has given more than $6 to her sister.

Questioned by the committee, she testified that she did not give the money to her at one time, but gave it to her through the week. Her sister has to have something to live on, she cannot run the house on $5 or $6. She turns in $5 regularly, and then coming on the last of the week she gives her $1 or $2. She left the carpet lining mills in July. The work there was not regular, and she thought she was not getting money enough for the work she was doing. In the winter time she would not have hardly any work to do. She needs $3, $4 or $5 for herself. She has no bank account and does not save any money. Her sister has no bank account.

Alexander Fraser, called by the committee, testified that he could not say how much a carpenter earned in twelve months; could not say what his average would be. The pay depends entirely whether the men work three or four days or a whole week. One year is stormy and another liable to be pleasant. A man might work three days in the week, and then not have anything to do for the rest of the week. He never figured up the average time of an employee for a year. He has only two men working steadily for him. Beginning in November and continuing up into March there is not much carpenter work. In November, December, January, February and March there is not very much carpenter work going on. This job that McLean was killed on was going on in January, but the men were not working full time because of stormy weather.

Ellen McLean, recalled, testified that the last Saturday night her brother was at the house he put $7 on the table and told her sister to take it. Mary said, "Mike, probably you will be short," and Michael took out $2 and between 50 and 60 cents in change, and said, "I have enough here that will do me to pay

my rent," and he said, "I might be over through the week; might have two or three days' work." He said he would not take the money, and put it on the table, and her sister told him to take it — that she might be able to get along without it this week. He put it in the china closet and started out. Mary never moved from the corner of the table. Ellen got up and went out with him as far as the car. There is a little girl in the house, supposed to be an adopted child. Michael was very fond of her, and he never left the house without giving her money. He did not have to pay her board. He would give her a quarter and 10 cents in money, and many times a dollar bill. He never went out of the house without giving her fifty cents. She is going on eleven years old, and has been living with them since she was seven years old. Roderick does not earn enough to pay his board. A man should pay $5 board by right, but he would not average more than $2.50 or $3. The little girl's name is Marion McLean; she has been legally adopted. Michael would give her money and tell her to buy something for herself, — shoes or whatever the child needed. The little girl is no relation to Mary and no relation to any of the family. When Michael left a dollar with the little girl the child would give it to Ellen and tell her to put it with her own and buy her clothes. Part of her wages went to support this little girl.

Mary McLean, recalled, testified that she heard the testimony of McLeod in regard to returning the $5, but that incident never occurred at all. She, herself, has been treated by a doctor for the last year or two. Dr. Wm. S. Buckley has been attending her for the last nine or ten years. She has rheumatism of the feet and fallen arches. He last attended her about two years ago; then she needed a doctor, and as Dr. Buckley was not home she called Dr. McKee. She used her brother's money to pay the doctor's bill, and she owes $4 on it yet. Nothing has been paid on it since May, 1913. She has not paid anything on Dr. McKee's bill except for two visits. Dr. McKee sent her to the City Hospital. She has been going to Dr. McKee probably every two weeks since a year ago last October.

The committee of arbitration find upon the evidence that the claimant, Mary McLean, was a next of kin of the deceased

employee, partly dependent upon his earnings for support at the time of his injury and death, and is, therefore, entitled to compensation under the act. By the provisions of section 6, Part II., it is provided that in the cases of persons partly dependent the insurer shall pay such dependents "a weekly compensation equal to the same proportion of the weekly payments for the persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of his injury." The evidence shows that the regular contribution of the deceased employee to his sister was $8 a week. Sometimes he gave her $9 and some weeks he would give only $6 or $7, making up later for the weeks when his regular contribution was short; but his regular contribution was $8. The claimant handled all the money that was turned in for running the house, but it is clear that there could have been little left for her support out of the amounts turned in by her sister Ellen and her brother Roderick.

In view of the lack of evidence as to the annual earnings of a carpenter the best that the committee can do is to compute them as 52 times the average weekly wages of $24.20, the union rate for carpenters. With this as a basis the amount due the claimant as a partial dependent receiving a contribution of $8 a week is $3.30.

The committee has considered the insurer's request that it reject all the testimony in behalf of the claimant as being untrustworthy, and as indicated in this finding declines to do so. It had ample opportunity to judge both the desire of the witnesses to tell the truth and the desire too of the insurer to get at the truth. The McLeans are ignorant persons, plainly ill at ease in their surroundings, but we believe that they are honest. We find no important discrepancies in their stories as told on direct examination and the evidence introduced by the insurer to contradict them. Much ado was made by the insurer as to the drinking habits of the deceased. Police Officer Sullivan had seen him drunk three or four times in three or four years. Police Officer Wragg testified that he was drunk practically every Saturday night, and yet he saw him only every other Saturday. Wragg locked him up for drunkenness only on two occasions, and Wragg does not appear to be the kind of an officer who would let a drunken man escape on any occasion.

McLean never served any time for drunkenness. Seiferth, the insurer's witness, could not say that he ever saw McLean under the influence of liquor, and yet he lived with the Seiferth's for over two years, and he regularly paid his rent of $2 a week. McLeod, a fellow workman of McLean's, called by the insurer, never knew the deceased to be short of money, and never knew him to be out of work.

Even if the committee disbelieved part of the testimony of the claimant, that would not be a sufficient reason for rejecting all of it. (Commonwealth *v.* Wood, 11 Gray, 85, 89, 93; Hill *v.* West End St. Railway, 158 Mass. 458, 460.)

But we find no discrepancies in the testimony that are not easily explainable. In that book of all books, that history which is our guide in life and our hope in death, the four evangelists, Matthew, Mark, Luke and John, in telling what Pilate inscribed over the cross of Christ, each gives the inscription in different words. They were telling of something that one would think would have been indelibly seared upon their memories, and yet they differed quite materially as to what those words were. Despite this the authenticity of that inspired narrative is generally accepted.

The committee of arbitration finds that the claimant, as a next of kin partially dependent for support upon the earnings of the deceased employee, is entitled to compensation from the insurer in the amount of $3.30 a week for a period of five hundred weeks from Jan. 4, 1915.

The following requests for rulings made by the insurer are denied in so far as they are inconsistent with these findings: —

1. The amount of compensation to be allowed a dependent must be arrived at by mathematical computation, and is not to be guessed at.
2. The allowance to a dependent must be estimated for the period of fifty-two weeks preceding the death.
3. There is not enough evidence in this claim for mathematical computation.
4. There is no evidence to justify a finding of total dependency.
5 There is no evidence to justify a finding of partial dependency.

FRANK J. DONAHUE.
FRANCIS X. QUIGLEY.

Herbert L. Barrett dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, June 8, 1916, at 9 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

Appearances: Harold J. Quinlan for the employee; Norman F. Hesseltine for the insurer.

The insurer filed the following requests for rulings: —

1. If the claimant, the sister of the deceased, is physically able to earn her own living and lived apart from her brother at the time of his death, maintaining her own establishment, keeping house for herself, another brother and sister, and the deceased owed no legal liability to support her, she is not entitled to compensation on the ground of partial dependency.

2. If the claimant, the sister, is physically able to support herself and lived apart from her brother at the time of his death, maintaining her own establishment, keeping house for herself, another brother and sister, and the deceased owed her no legal obligation to support her, the payment of money by the deceased to her from time to time does not entitle her to compensation on the ground of dependency.

3. That the burden of proof is on the claimant to show she is dependent on the deceased on the ground of some physical incapacity or of legal obligation on the part of the deceased.

4. That on all the evidence the claimant is not entitled to recover compensation.

5. That the payment of money from time to time by the deceased to his sister, who was physically able to earn her own living and was living apart from her brother at the time of his death, maintaining her own establishment, keeping house for herself, another brother and sister, which money was used for the running expenses in the aforesaid household, does not constitute dependency within the meaning of the act.

6. The insurer further requests the Industrial Accident Board to report all the evidence.

These rulings are denied, in so far as they are inconsistent with the findings made by the committee of arbitration, which are hereby affirmed and adopted by the Board. The claimant is fifty-four years of age. She testified that she is unable to work herself. The committee of arbitration heard her testify

and observed her, and they found that she was partially dependent for support upon the deceased employee.

The evidence shows and we find that the claimant, Mary McLean, was a next of kin of the deceased employee, partially dependent upon his earnings for support to the extent of a weekly contribution of $8 at the time of his injury and death; and that there is due her from the insurer a weekly compensation of $3.30 for a period of five hundred weeks from Jan. 4, 1915.

FRANK J. DONAHUE.
DAVID T. DICKINSON.
THOMAS F. BOYLE.
JOSEPH A. PARKS.

CASE NO. 1590.

ANNIE ADDISON, *Employee.*
LINCOLN MANUFACTURING COMPANY, *Employer.*
FRANKFORT GENERAL INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. WILLFUL MISCONDUCT. CLEANING MOVING MACHINERY. RULE NOT ENFORCED. COMPENSATION AWARDED.

The employee, while engaged in cleaning moving machinery, received an injury which necessitated the amputation of the first phalanx of the right thumb. There was evidence that a rule prohibiting the cleaning of machinery in motion was posted in the claimant's place of employment, but that it was not enforced.

Held, that the injury arose out of the employment.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Annie Addison *v.* Frankfort General Insurance Company, this being case No. 1590 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Thomas F. Boyle of the Industrial Accident Board, chairman, William Acton, representing the employee, and James O. Porter, representing the insurer, heard the parties and their witnesses at Room 35,

City Hall, Fall River, Mass., on Tuesday, March 16, 1915, at 10.30 A.M.

Thomas F. Higgins appeared for the employee, and H. R. Bygrave appeared for the insurer, as counsel.

On Dec. 11, 1914, Annie Addison, the injured employee, was cleaning her machine while it was in motion, when the waste she was using got caught and drew her right thumb into the gears. Her thumb was so injured as to require amputation of the first phalange.

The insurer contends serious and willful misconduct on the part of the employee for cleaning her machine while it was in motion. There is also a question of average weekly wages.

Annie Addison, the injured employee, testified: —

On Dec. 11, 1914, I was injured in the card room of the Lincoln Mill, where I was working as a speeder-tender. I have been a speeder-tender since I was twelve years old. I am twenty-two years old now. At the time of the injury I was making $10 a week, standing pay. I did not work by the piece. I only made less when I was loafing. On the day of the accident I started to clean my machine while it was in motion. The girls usually cleaned their machines while they were in motion. I always cleaned my machine when it was in motion. The boss and secondhand have been there many times when I have been cleaning it.

I came to this country from England when I was eighteen years old. I started in to work at the Lincoln Mills when I first came here, and worked on the same kind of a speeder I worked on when injured. I have always worked on speeders. The machine is started from the front. I know how to start and stop the machine. The machinery has to be going to take the dirt out of the gears. I never saw a notice about not cleaning machinery when it was in motion. I did not know it was dangerous to clean the machinery while it was in motion because I have always done it and never got my finger caught. Mr. Hassett of the insurance company came to my house and talked with me about the accident. I did not tell him there was a rule there, but said there might have been. There was no one there who stopped the speeders from cleaning when the machine was in motion. I ran the speeder with another employee. I was on my speeder and he on his, and we were both cleaning at the same time, with the machine going. I went to the Union Hospital when I was injured. On February 15 the house doctor, Dr. Simmons, wrote out a paper saying it would be from four to six months longer that I would be disabled. I have not worked since the accident.

You have to keep going all the time, and that is why we clean the speeders with the machines going. If you do not get your work off, somebody else will get the job. If we stopped the machinery we would

get off less work. Charlie Brady, the boss, was looking at the hanks one day when I was there and he said, "I used to run two speeders, and I used to get off twice as much work, and you only run one speeder." I said, "We do not stop our machines to clean them and we cannot get off any more work." I was never criticized for cleaning my machinery when in motion. I have cleaned my machine when Mr. Brady was present. The secondhand never told me not to. I saw him speak to another girl, and she did not stop the machine and he walked away. He could have gone around and stopped the machine. I was cleaning one Saturday morning with the speeder on, and the secondhand told us to go on and clean as much as we could while the machine was going, and to keep the machine going. There have been lots of discharges for not getting the work off.

Charles A. Brady, foreman in the card room of the Lincoln Manufacturing Company, testified: —

On Dec. 11, 1914, we had a printed notice, in English, French and one other language, either Polish or Portuguese, in reference to cleaning machines. It is and was on the wall, near the sink, where the drinking water is and where the employees wash up. It is in the room where Miss Addison works. The rule was that all employees of the corporation should not clean any machinery while in motion. I hire and discharge the help in my department. I am constantly going about the department and observing the work of the employees. I have not seen employees in the Lincoln Mill cleaning the machinery while in motion, although I have seen it done in some places. I have never discharged employees because they stopped their machinery to clean it. A certain form of cleaning is done with the machinery in motion. The gears are not cleaned while the machine is in motion. You can clean the gears while in motion in certain places, but you cannot clean them as good as you can when stopped. To my knowledge I never saw Miss Addison clean her machine when in motion, and I would not have allowed her to do it. I do not remember any conversation with her about not turning out enough work, but it is possible I had it. The rule said, "All machinery," but I have seen the employees cleaning the rolls while the machinery was going. I never stopped them because it is the practice in general, and it is the easiest way to clean them. It is a common practice. I used to run two speeders, and cleaned certain parts while the machinery was running. There are casings over the dangerous gears. The speeder-tenders are obliged to wipe off their machines once a day. The creels are cleaned every day. Every Wednesday and Friday they clean the back part of their machines. There was not any special time for the stoppage of machinery to clean them on these days. I have not seen the machines running when the gears are being cleaned. I see no reason why she did not stop her machine on this day unless she was anxious to

produce as much work as anybody else. Sixty hanks a day is the average for a speeder-tender. Of course it is necessary to keep the machines going to produce the work. Miss Addison was a very good worker, obeyed orders, never made any trouble for anybody and never went looking for trouble. She received $10 a week, standing pay. It takes about twenty-five minutes to clean the backs of the machines. There are 38 speeders in the room. Certain parts of the combers and slubbers can be cleaned without stopping the machinery. It is possible the girls did clean the gears with the machinery in operation when I did not see them. The reason why I did not enforce the rule about not cleaning all machinery when in motion is because it was a general practice everywhere. I have never had occasion to caution any of the girls in this mill in regard to cleaning gears while the machinery is in motion, and it is the custom to clean certain parts of the machine while in motion. I have never cautioned them what parts they must not clean because I had no reason to. The room is about 150 feet wide and 100 feet long, and there is just this one printed notice in the room.

Dr. Richard B. Butler testified: —

I treated Miss Addison, after the accident, at the Union Hospital. She has an awfully bad thumb. It was the most horribly mangled finger I ever saw in my life. The first phalangeal bone was almost pulled out of the socket, and the second bone was laid bare for practically the whole length. She was seen first by Dr. Simmons, and he advised complete amputation of the thumb. The girl was a little averse to having it taken off, and he told her that possibly the thumb might be saved, but would not be of any use. She persisted in having it saved, and the result is a practically useless thumb. If it had been taken off originally it would be in a better condition now. It is very sensitive, and she cannot hold anything with it. If it is so sensitive that she cannot hold anything I would advise amputation, but I think it is the tendency of a good many patients, and especially women, to save as much as possible. It is the best surgical advice to save as much of the thumb as possible because the thumb is the best member on the hand. We could not conceive that she would have that condition now, although Dr. Simmons advised having it taken off and, after my first dressing it, my opinion agreed with his, because of the horribly mangled condition. I do not think she will be able to do very much work for at least six months, and the statement of Dr. Simmons is that she may work in from four to six months from February 15. I would make a tentative statement: She may have a sensitive thumb all the rest of her life. The nerves are all pinched.

Lucien Des Rosiers, secondhand at the Lincoln Manufacturing Company, testified: —

There has been a rule in reference to cleaning machinery since I have worked at the mill. It is a printed rule and is posted near the wash sink.

I know it is in French and English. I could not read the notice all through. In substance, it says machinery should be stopped to clean. I have seen employees cleaning their gears while the machines were in motion. I would stop them. As I remember, I have never seen Miss Addison cleaning the gears. I have seen her cleaning the machine generally. I cannot remember how many times I have stopped the employees. I know I have stopped Annie Moran and Rose Poquette. I told them to get away, but I never had time to stay there and tell them about it. They did not stop while I was there, and I did not wait to see them stop. While the machinery is in motion the creel and casings can be cleaned. It is just lately that I told Rose Poquette not to do it. In cleaning machines we use waste and brushes. We use waste to clean the gears. We use a brush to clean the creels. Annie Moran is my sister-in-law and Rose Poquette is my cousin.

James Tansey, secretary of the Calenders Association, testified: —

As far as I know I think there is a good deal of machinery cleaned while the machines are in motion, and some done when stopped.

The evidence shows that, even if there were a printed rule in regard to not cleaning machinery while in motion, it was customary to clean certain parts while in motion, and that the foreman had never instructed the employees which parts they should not clean while the machine was in motion.

On this evidence we find that Annie Addison, the injured employee, received an injury arising out of and in the course of her employment on Dec. 11, 1914; that at the time she was injured she was not guilty of serious and willful misconduct in cleaning the machine while in motion; that her average weekly wages were $10; that, therefore, she is entitled to reasonable medical and hospital services during the first two weeks after the injury, and, beginning on the fifteenth day after the injury, Dec. 25, 1914, to the payment of a weekly compensation at the rate of $6.67, *i.e.*, two-thirds of $10, to continue during the period of her total incapacity for work as a result of the injury; and that she is also entitled to twelve weeks' additional compensation at the rate of $6.67 a week for the loss of a phalange of the thumb, as provided by section 11 (*d*), Part II. of the act.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to

review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

THOMAS F. BOYLE.
WILLIAM ACTON.
JAMES O. PORTER.

CASE No. 1601.

D. CLARK ANDERSON, *Employee.*
FRANK H. POWERS, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

DURATION OF INCAPACITY. UNSATISFACTORY MEDICAL EVIDENCE. REASONABLE INFERENCE. COMMITTEE OBLIGED TO ESTIMATE EARNING POWER.

The employee, a carpenter, had a staging break under him and fell 8 feet, a fellow employee falling on his stomach. Compensation was stopped by the insurer after ten weeks, on the ground that the incapacity then existing resulted from a cause separate from the injury received in his employment. The medical evidence as to the nature of his trouble was unsatisfactory. The employee had done no work since the injury.

Held, that his incapacity is due to the injury.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of D. Clark Anderson *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1601 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, W. Lloyd Allen, representing the insurer, and N. Thomas Merritt, Jr., representing the employee, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, New Albion Building, Boston, Mass., Friday, April 29, 1915, at 10 A.M.

John M. Morrison appeared as counsel for the insurer.

The employee received an injury arising out of and in the course of his employment on Sept. 18, 1914. A staging on which he was working broke and let him drop to the floor, a distance of 8 feet. A fellow employee fell with him and landed on Anderson's stomach. Compensation of $10 a week was paid up to and including Jan. 22, 1915. The question was as to the duration of incapacity.

The entire material evidence was as follows: —

D. Clark Anderson, the employee, testified that he had made no attempt to work since the injury because he was unable to do so. His left groin gives him the most trouble, but he also has severe pain in the small of the back. He is a carpenter by trade, and cannot do his regular work because of the pain it gives him to stoop over. Up to six or seven weeks ago his knee troubled him, but that is better now. He was a well, sound man before this injury and earned $24.20 a week.

Dr. Charles McCarthy of Malden testified that Mr. Anderson came to him on Sept. 18, 1914. He was suffering from shock and constant pain in the abdomen and back. He had great difficulty in passing water and in moving his legs. At first they had to be moved for him, and then he rigged up a mechanical device for moving them. Whether or not there was any swelling in his groin when he first came to him the doctor was not sure, but there was evidence of the swelling later in either groin. His right hip was contused, tender and swollen. He could not say whether Anderson is suffering from a hernia. He last saw him three or four weeks before this hearing. His back then was tender and sore, and his legs weak. Both groins were swollen.

Dr. Charles S. J. McNeill of Malden testified that Anderson called on him on Dec. 9, 1914. In his knee he found a swelling which would indicate housemaid's knee; his back was sore on manipulation, and there was swelling in the groins, the left being more tender than the right. On coughing he could get no impulse to indicate hernia, although it seemed like some kind of a rupture, either of a muscle or something else. He saw Anderson several times after this first visit. On January 29 his back was not so bothersome, the swelling on his knee, around which he had an elastic bandage, had gone down perceptibly,

and the lump on the right side was a little bit improved. He saw him again on April 14, and his condition then was really improved, except for the left groin; the right groin was better and the knee was well. The disabling injury is the left groin. It would be dangerous for him to risk himself on a ladder with the groin in its present condition; if the pain caught him it might cause him to lose his footing and fall. Eliminating the groin trouble he is able to work.

George A. Orton, a friend and neighbor of Anderson's, testified that he sat up with him for three or four nights after he was injured. Anderson suffered intensely, and his abdomen was black and blue where the blood had settled as a result of his fellow workman falling on him. Anderson had worked hard for the twenty years he had known him and never lost a day prior to this injury.

Dr. Charles L. Scudder, appointed by the Board as an impartial physician under the provisions of section 8, Part III. of the act, made two examinations of Anderson prior to the hearing. His first examination was on Dec. 5, 1914, when he made the following report: —

I submit the following report in the case of D. Clark Anderson whom I examined yesterday in my office:

Mr. Anderson, about sixty years old, is a keen, wide-awake, intelligent man, who, ten weeks ago, received a rather severe injury by falling and being jumped upon by a man falling the same distance that he fell.

Mr. Anderson complains of pains through his back, of an inability to stoop over and to lift objects of any weight when stooping over. He says that he has a rupture on the right side and that he has a swelling on his knee. The swelling on his knee prevents him from kneeling, the rupture prevents him from heavy work, and his back also prevents him from doing his work.

It is my opinion that the swelling in the right groin was not occasioned by the fall despite the fact that it was noticed after the fall. It is also my opinion that the swelling of the right knee was not necessarily occasioned by the fall. He has what is called a housemaid's knee, that is, an accumulation of fluid in the bursa in front of the patella. It is rather unusual for this to appear from sudden trauma. It comes ordinarily from repeated trauma in the doing of one's regular work, and is not uncommon in carpenters and scrubwomen who have to be on their knees to do their work.

I do believe that the man has a certain amount of genuine disability in connection with his back. I do not think he is faking the disturbance

with his back. In a man of his years it would take some time to recover from the kind of injury which he received. He has strained and bruised his back, but eventually should recover completely.

I do not believe that at present he can do his full work because of the difficulty with his back. I think he can do light work.

On Jan. 19, 1915, Dr. Scudder supplemented this report by a letter to the Board, as follows: —

Replying to your request of January 13, that I re-examine D. Clark Anderson, I wish to say that it is not necessary for me to see Mr. Anderson again in person. If you will refer to my letter you will see in the third paragraph that I have said that it is my opinion that the swelling in the right groin was not occasioned by the fall.

There is no doubt in my mind but that the man probably has a rupture, and that it may have been aggravated by his fall, but that it was occasioned by his fall is not at all likely.

On Jan. 20, 1915, Dr. Scudder re-examined Anderson and reported as follows: —

I have again examined D. Clark Anderson of Malden, Mass.

I do not find any evidence of trouble which can be properly ascribed to the accident with which he met, so far as any hernia is concerned. There is a slight fullness and tenderness on the left side in the region of the internal inguinal ring. On the right side there is a swelling in the region of this same ring. There is no impulse on coughing, and on January 20 when I saw him there was no rupture.

It is my opinion that the accident received by him is not likely to have produced the condition found in these two regions.

At the hearing Dr. Scudder testified that Anderson had no hernia when he examined him on January 20. The fact that the swellings in the groins had improved led him to feel there was no hernia. If there was a rupture there would be more evidence later, rather than less. It would be unusual for a man to be ruptured by another man falling on his abdomen. If a man had a weakness in that region it is conceivable that the injury might increase the tendency to rupture. On January 20 the only disabling injury was in the left groin, except that he complained of pain in his back, which the doctor believed was genuine.

At this point it was decided that Dr. Scudder make another

examination of the employee, which he did, and as a result of which he testified as follows: —

In the left groin I found large glands which are sensitive, and in the right groin no evidence of rupture; neither do I find evidence of rupture in the left groin. There is a little fullness over the internal ring, a little more than usual. Stretching would cause this fullness. I do not think the large glands have any connection with the trauma. I should think he might be able to do light work, but he is not able to do heavy work at present. A man who has met with a serious injury such as he met with takes time at his age to get over the thing, and I think he is doing as well as can be expected. If he is at present able to do light work I do not think I should be asked to state any definite time when he can go ahead and do the ordinary heavy work he may have been doing. Still, I see no reason why he should not be able to do this before a very long time. I think that a man in this condition should begin with light work, gradually increase it, and in that way he can find out himself what he can do. There is no disablement in evidence at the present time which would prevent him from beginning to do work, and working his way along.

The following statement from Dr. James F. DuVally of Boston, by agreement, was admitted in evidence: —

On examination of D. Clark Anderson I find rupture in both sides, and operation is necessary to relieve him.

J. F. DuVally.

Nov. 12, 1914.

The committee of arbitration finds the medical evidence in this case very unsatisfactory in respect to being of much help to the committee in reaching a conclusion. There appears, upon consideration of all the evidence, a question as to whether or not he is suffering from a single or a double hernia, and whether such hernia, or hernias, if existent, were caused or aggravated by his injury. While Dr. Scudder does not think the glandular trouble was caused by the injury there is no evidence as to what may have caused it. In a case of this kind it is proper for the committee to make reasonable inferences from the facts which have been admitted or proved. The facts are that the employee suffered an injury of unusual severity through the combination of his own fall and a fellow employee falling full weight upon his abdomen; that from this accident

he suffered injuries to his hip, back, legs and knee, all producing a shock to the system; that there was some injury to his bladder as evidenced by his difficulty in passing water; that later swollen glands evidenced themselves, and these glands are now the sole cause of any existing disability; and that prior to his injury he was a strong, hard-working man, earning $24.20 a week. The burden here is on the insurer to prove the cessation of any incapacity due to the injury (Baker *v.* Jewell, 3 B. W. C. C. 503, 504). This, the committee finds, the insurer has not established by a fair preponderance of the evidence. The insurer has established the fact, however, that the employee can do light work. A finding as to what he can earn must, under the circumstances, in this and similar cases, be arbitrary, subject, however, to the right of either party to come before the Board at any time, under section 12 of Part III. of the act, and have an order issued in accordance with the evidence of earning capacity as presented on such review.

The committee of arbitration finds that the employee was totally incapacitated for work as a result of his injuries up to the time of this hearing, April 29, 1915, and is entitled to compensation for such total incapacity at the rate of $10 a week from the time when compensation was stopped by the insurer up to the present time. The committee further finds that such total incapacity ceased on the date of the hearing, and that the employee is now able to earn $12 a week and is therefore entitled to compensation for partial incapacity, from the date of the hearing until such partial incapacity has ceased, at the rate of $8.13 a week, this being 66⅔ per cent. of the difference between his average weekly wages before the injury and the average weekly wages which he is now able to earn.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act, and the general provisions of said act and its amendments.

FRANK J. DONAHUE.
N. THOMAS MERRITT, JR.

W. Lloyd Allen dissents.

CASE No. 1607.

CATHERINE MURPHY, *Employee.*
FORBES & WALLACE, *Employer.*
TRAVELERS INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. CHAIN OF CAUSATION. NEURITIS. EMPLOYEE CLAIMED THAT HER NERVOUS CONDITION WAS DUE TO THE LIFTING OF A BOX AT HER PLACE OF EMPLOYMENT. CLAIM DISMISSED.

The employee claimed to have received a personal injury while lifting a box in her place of employment, and that the nervous condition which incapacitated her had a causal relation to such injury. The impartial medical examiner reported that the employee was not incapacitated for work by reason of a personal injury arising out of her employment, and that she suffered only from a condition of discomfort, which was purely functional.

Held, that the employee was not entitled to compensation.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Catherine Murphy *v.* Travelers Insurance Company, this being case No. 1607 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Thomas F. Boyle, chairman, Frank H. Reedy, representing the employee, and Thomas H. Kirkland, representing the insurer, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, 423 Main Street, Springfield, Mass., Friday, March 12, 1915, at 11.30 A.M.

H. A. Moran appeared as counsel for the insurer; the employee was not represented by counsel.

Catherine Murphy, the employee, claims that she received an injury on Aug. 29, 1913, while in the employ of Forbes & Wallace. The insurer contends that no such injury was received by her while in the employ of this firm.

Catherine Murphy testified that she was hired by Forbes & Wallace on Aug. 28, 1913, as clerk in the infants' department; that the next morning, August 29, she was sent to the stock room to work, and while doing this work she received instruc-

tions from a Mrs. Wood, who had charge of the department in which she, Miss Murphy, worked, to lift a box about a yard square, containing about half a dozen children's winter coats, and place it on a shelf about 5 feet high; that while lifting the box she felt something snap in her side; that she asked for assistance and was refused same; that she told the girls with whom she was working that something snapped in her right side; that she kept on working until noon, at which time Mrs. Wood told her that her services were no longer needed; that she went home and has not worked since, although she does a few light things about the house; that she visited Dr. D. J. Brown two or three weeks after the accident, but that he did not make an examination; that recently she has consulted Dr. Davis, Dr. Leary and Dr. A. A. Starbuck, and that the doctors, with the exception of Dr. Starbuck, did not seem to know what was the matter; that Dr. Starbuck told her that the muscles in her side were strained. She further testified that she notified her employer of her injury probably in September, 1914; that her folks know about her injury, and that she has been applying ointments to her side, but they did not do any good.

Dr. A. A. Starbuck testified that on the day before yesterday she made an examination of Miss Murphy and found a tenderness of the muscles of the right side, — she found no lump and no rupture; that there is no mark or swelling; that there is a slight stiffening of the muscles when an attempt is made to examine her; that a person could cause this contraction of muscles; that it would not prevent her from doing ordinary store work.

Mrs. M. C. Wood testified that she is employed by Forbes & Wallace, and was so employed on Aug. 29, 1913; she remembered that Miss Murphy worked for her in the infants' department on this date; that Miss Murphy did the regular clerk's work the same as the rest of the girls; that they have no box in her department the size of the box described by Miss Murphy; that they have small boxes containing dresses, weighing probably 15 pounds; that if they have any heavy bundles to lift a porter is called upon to do this lifting; that she, Mrs. Wood, does not ever remember Miss Murphy lifting a box; that Miss Murphy never told her that she injured her

side, — she never heard of such an injury until the inspector from the insurance company told her about it; that there were no heavy boxes to be lifted that day; that they have no place 5 feet high where they put the boxes. She further testified, "I can say positively that Miss Murphy did not lift a box;" that she could not have lifted a box without Mrs. Wood seeing her; that she let her go because Miss Murphy talked terribly about Mr. Wallace, and she, Mrs. Wood, thought Miss Murphy was a dangerous person to have in the store; that she did not let her go because she was hurt.

Edith Lucia testified that she is employed in the infants' department of Forbes & Wallace and was so employed on Aug. 29, 1913. She remembers such a person as Miss Murphy working there, but could not positively identify her; she does not remember ever helping Miss Murphy lift a box, or remember that Miss Murphy ever told her that something snapped in her side; the girls do not have much lifting, because if there is anything heavy they have a porter to do that; these boxes are pasteboard boxes and weigh about 10 pounds.

There was no evidence before the committee of arbitration to show that the employee did in fact receive a personal injury as claimed. Her statement that she received an incapacitating injury while lifting a box in the employ of Forbes & Wallace was not verified. On the contrary, the report of the impartial physician appointed by the Board stated that the employee was "manifestly nervous, and evidently was prior to August, 1913, having been treated for such a condition." The impartial physician further states "that her discomfort is a functional one," that is, that it is not due to any injury which may possibly have been received in the course of and arising out of her employment.

The committee of arbitration finds upon all the evidence that the employee, Catherine Murphy, did not receive a personal injury arising out of and in the course of her employment and is not entitled to compensation under the statute.

THOMAS F. BOYLE.
THOMAS H. KIRKLAND.
FRANK H. REEDY.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, April 8, 1915, at 2 P.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence before the committee of arbitration failed to show any causal relation between the present condition of the employee and a personal injury arising out of and in the course of her employment. So far as the evidence indicated, the employee did not receive a personal injury, as alleged, her statement that she received such an injury while lifting a box in the place of employment of the subscriber not being verified, and the medical evidence showing that the employee's condition of nervousness antedated the time of the alleged occurrence of the personal injury, on Aug. 29, 1913. The impartial examiner, Dr. Philip Kilroy, reported that the employee was not incapacitated for work by reason of a personal injury arising out of and in the course of her employment, and that she suffered only from a condition of discomfort which was purely functional.

The Board finds, upon all the evidence, that the employee, Catherine Murphy, did not receive a personal injury arising out of and in the course of her employment, and that, therefore, no compensation is due her under the statute.

FRANK J. DONAHUE.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1612.

MARGARET FOLEY, *Employee.*
MICHAEL J. COLLINS, *Employer.*
CASUALTY COMPANY OF AMERICA, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. EYE INJURY. ULCERATION STARTED BY ENTRANCE OF FOREIGN BODY. COMPENSATION AWARDED.

The employee claimed that the sharp end of a wire was snapped into her eye by the act of a fellow employee, and that by reason of such injury her vision had been reduced so as to prevent her from working. The impartial physician stated that she had either received this injury by a piece of wire as claimed, or that she had been struck by some foreign body, which started up an ulceration and affected her vision.

Held, that the employee was entitled to compensation.

Review of weekly payments before the Industrial Accident Board.

Decision. — The Industrial Accident Board finds that the employee is still totally incapacitated for work.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Margaret Foley *v.* Casualty Company of America, this being case No. 1612 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Thomas F. Boyle of the Industrial Accident Board, chairman, Edward Creswell, representing the employee, and Charles L. Carr, representing the insurer, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, New Albion Building, Boston, Mass., on Tuesday, March 23, 1915, at 10 A.M., and on Wednesday, March 31, 1915, at 1 P.M.

John C. Cronin appeared for the employee, and S. H. Batchelder appeared for the insurer, as counsel.

The question in the case is whether the employee, Margaret Foley, received an injury arising out of and in the course of her employment.

The employee claims that on Dec. 18, 1914, while she was sorting papers, a fellow employee accidentally hit her in the left eye with a piece of wire. Her wages were $5 a week.

Margaret Foley testified: —

On Dec. 18, 1914, I was in the employ of Michael J. Collins, whose business is paper stock. In this work we sort paper, put papers in the press, spread shavings and do all kinds of work like that. We take paper from small bales and make large bales. On December 18 I was filling the press and Alice Duby was opening the bales, and she grabbed the wire and it snapped back into my eye. I was about 3 feet away from her and it was dark, — there was not much light. Another lady was working at this time, but she had her back turned and did not see anything. I told Alice Duby that she put the wire in my eye, and she said she could not help it. Of course she could not, because it was dark and she could not see where the wire was going. I told her my eye was very sore, and she said it would be all right in the morning. We were taking the paper off the floor and putting it in the press to make a bale out of it. We were right beside the press at the time. In the room there was just a lamp. It was about half past 4 o'clock. The lamp was about 10 feet away from us. I have been working for Mr. Collins about eight years off and on, but I did not work steady. I received $5 a week. The sharp end of the wire went into my eye. I did not speak to Mr. Collins about it because I thought it would be all right. It was a part of our business to open the bales, which were opened with a wire cutter. The evening I was hurt I did not go out. My mother told me to bathe my eye with hot water, and I did. I let it go for a week, thinking it would get well, and then the Monday after Christmas I went to the Carney Hospital, and they said it was almost too late to save my eye. The day after the accident, Saturday, I stayed in the house. I kept bathing my eye in lukewarm and hot water. I stayed in the house all the following week, — I could not see to go out. I told my sister to tell Mr. Collins and she neglected it for two or three days, and when she came to the hospital I told her to go and tell him, and she went that evening on her way home from work. I was in the hospital nine weeks. I went in the 28th of December. Before the accident I never had any trouble with my eyes. I could read and write. I cannot see a thing now out of this left eye. Before I went to the hospital I suffered considerable pain and I nearly went crazy. I did not sleep at all. I would be up all night bathing my eye with hot water. I have done no work since the accident. I am not able to do work now because I cannot see, and if I stoop, my head becomes dizzy. Of course, I might work after awhile, as the doctor says. I guess I have to have another operation.

On cross-examination testified: —

I have worked for Mr. Collins about eight years. I might have loafed about three months a year. There was nothing the matter with my eye that morning when I came to work. I did not have a cold. I came

back the next day with a handkerchief on my eye to get my pay, and I said I hurt my eye but expected to go back to work the following Monday. I told Mr. Collins my eye was sore and that I got hurt, and that I might be back to work Monday. I do not think he understood me because he did not pay much heed to me and I walked out. I did not want to blame the girl because I expected to go back to work the following Monday. I would not accuse a girl for something she did not mean to do. I had no talk about the wire with Mr. Collins until I sent my sister to tell him. It was Christmas week that I told my sister to go and tell Mr. Collins, and she neglected doing it. I have not tried to get to work since the accident. I cannot see with that eye. I see black shades right before me. It bothers me. I can see with the other eye. I was stooping down taking up the paper when the wire struck me.

The following record was offered in evidence (record of Carney Hospital): —

MARGARET FOLEY.

Diagnosis. — Ulcerative keratitis with hypopyon of left eye.

Examination. — Ulcer extends across the junction of middle and lower thirds of cornea about one-fourth inch in length and one-eighth inch in width. Cornea numb, pupil very small and dilates very slightly.

℞ Hot fomentations every two hours for twenty minutes. Unguentum V–VI four times a day. Dionin, 5 per cent. 4 times per day, repeat if necessary.

By DR. HURLEY.

Jan. 5, 1915, release of pus from anterior chamber. One drop of a 1 per cent. atropina in eye followed by nosophen powder. Applied bandage every three hours.

Jan. 10, 1915, ℞ continued. Bandage — improving.

Jan. 20, 1915, ℞ continued.

Feb. 1, 1915, bandage removed — improved.

Feb. 15, 1915, discharged. Eye greatly improved with very little sight. Injury was from contact with a foreign body.

DEC. 28, 1914.

Dr. Joseph M. Scanlon of Carney Hospital identified this as a correct copy of the hospital record with the exception of the latter paragraph, and testified as follows: —

On my record book I say "injury was from a piece of wire while at work." Being in a hurry I overlooked it and put it as "foreign body." That is practically the only difference that I can see. This record was made on December 28, and that is what Mrs. Foley told me. I did not find any wire in the eye at that time. A piece of wire is a foreign body. I have no motive for changing it. I did not test her sight. She made

that statement when she was discharged, but I did not test it when she came in nor when she went out, and nobody at the hospital did. It may be possible that she had very little sight before she got any foreign body in it. I could not tell one way or the other. I am the doctor who receives the patients. I should say, from my experience, it could be caused by any foreign substance entering the eye plus infection. From my experience I never saw an ulcer on the eye result from a cold. I should say some forceful object must have hit the eye, larger than a piece of dirt. I should be strong in favor of some forceful object striking it, even having in mind that it had been there nine days. The operation was an incision through the cornea of the eye, letting out the pus from the anterior chamber. This operation would not destroy sight, it would better it. I could not tell from looking at her eye whether she had sight or not. It would have to have an ophthalmic examination. Dr. Hurley was the man who performed the operation. I saw the patient as she came in, and Dr. Woodside was on service at the time. I did not write the words "struck with a piece of wire while at work" at the time she entered the hospital. I put this in afterwards. It came to my mind afterwards. I remembered afterwards that the injury was from a foreign body, and then I memorized the statement and put it down. I made the copy Sunday, March 21. I did not talk with Mr. Cronin about the case. I do not know Mr. Cronin. I only know this woman from coming in contact with her at the hospital. This record was made on December 28, and the words "struck with piece of wire while at work" were written in on March 21, 1915. I have not seen Mrs. Foley since she left the hospital until to-day.

Nora Doyle, sister of Mrs. Margaret Foley, testified: —

I remember my sister coming home on the evening of the accident, and her eye was sore. I know she said she had a sore eye, and that the girl struck her with a wire through an accident. She bathed it in hot water. She asked me to go to Mr. Collins. I do not know whether it was that night she asked me, but do know it was a good while before I went to see Mr. Collins. About a week afterwards I went to Mr. Collins on my way home from work. I saw him in his office and told him my sister had a very sore eye and was at the hospital. I do not remember whether I said she had to have an operation on it, and I think he said, "That is the first I heard about it. I thought it was a cold she had."

On cross-examination testified: —

The night my sister was injured she did not tell me to go to Mr. Collins. She told me before she went to the hospital, but I forget the day. When I went to the hospital she said to be sure to tell Mr. Collins. I did not hear my sister complain of any cold. All I remember is that her eye was very sore. My memory is poor.

Margaret Foley, recalled, testified: —

On the night of the accident my eye was very sore and I could not stand the light. I looked at my eye and noticed it was all swollen on the inside. I did not take much notice because I could not open it enough to see.

Mrs. M. J. Duby testified: —

I remember the 18th of December, the day Mrs. Foley said she got hurt. The morning of the 18th Mrs. Foley's eye was swollen, and it looked to me kind of bloodshot — both her eyes were this way. I was putting paper into the press and all the wires had been cut. I was not cutting wires the latter part of the afternoon. She did not say anything to me about being struck with a piece of wire. She said nothing about going home. She said, "My eye is quite sore," and that is all she said. Two weeks ago Friday I was talking with Margaret, and she said her eye was sore. She said she was struck with a wire.

On cross-examination testified: —

I got hurt myself and was out a little over two and one-half weeks, and one of the young men at the insurance office wanted to know if I knew Mrs. Foley. It was about the 15th of February, I think. That is all he asked me. When I met Mrs. Foley two weeks ago last Friday I asked her how she was getting along, and she said pretty well. I asked her if she was working and she said, "No," her eye was bad, and then she asked me if I had been summoned to court, and I said, "No." During the day I went up to see her mother and stayed there about an hour and a quarter. Mrs. Foley was with us all the time. I asked her why she did not go down to Mr. Collins about her injury the same as I did with my hand. She said she did not think it was anything, and I said, "You should have gone down and made things right." I do not remember telling her that I knew the wire struck her. The bales weigh about 200 or 300 pounds. When we cut these wires the wires remain on the bale until the stuff is taken off the floor. We do not try to take the wire off when it is cut, we wait until the paper is taken out. Generally when I cut the wire I put it down flat. I remember the day she got hurt and that is all. I cannot remember anything else. That just comes to my mind. Going home that night she said her eye was sore, and I told her to bathe it in hot water. She did not come to work the next day, but a couple of days afterwards her sister came down. Mr. Collins and Mr. Callahan were not in, and she told me Margaret could not come in because both eyes were swollen from a cold. There was nothing about the wire at all.

Michael J. Collins, the employer, testified: —

On December 18 I had Mrs. Duby and Mrs. Foley in my employ. I deal in paper stock. This paper has to be graded and put into the press, and that is the reason for untying the bales. I did not learn of any accident until January 6. Her sister came to me and told me that Margaret had a very sore eye, and I told her I was sorry and asked her what was the trouble, and she told me her eye was hurt with some wire, accidentally, of course, in the hands of Alice Duby. I asked her why she did not tell me before, and she said she did not like to do so. Mrs. Foley came in the day after the alleged accident, that is, she came in on the 19th. I gave her her pay and asked her what was the trouble that she was not at work. She said that her eye was sore, that she had a cold in the eye and got some dust in it. That is my best recollection. Her eye was very sore and painful. I did not notice particularly which eye was inflamed, but she seemed to make light of it and wanted to know if she could come in to work the following Monday. When I heard about the wire I immediately called Mrs. Duby into my office and asked her what was the meaning of that. I asked if she struck Margaret with a wire, and she said, "No." I called the man in and he said that he had not seen anything about it. The bales weigh from 75 to 200 pounds, and are 2 feet square and 1 foot thick. The wire is cut with nippers for the purpose. Whoever is handiest to the bales does the cutting. Mrs. Foley has worked off and on for me. Her pay was $5 a week. She was always a faithful and honest woman.

Margaret Foley, recalled, testified: —

I met Mrs. Duby about two weeks ago, and she asked me how I was and if I was working, and I said that I had not been working since I was struck with that wire in my eye. I said, "You know you did it and you tried to deny it." She said, "Why, so I did." She knew she did it.

The hearing was adjourned at this point so that the employee might be examined by an impartial physician.

Following is a copy of the report of the impartial physician: —

March 26, 1915.

The above claimant states that she received an injury Dec. 18, 1914, being struck by a piece of wire in the left eye.

After remaining at home a few days she went to Carney Hospital, where she was admitted and remained nine weeks.

My examination shows that this woman has had an extensive corneal ulceration, and the ulcer has been split; this operation prevented complete loss of the eye.

The pupil is contracted and covered with a plastic exudate.

Vision in the injured eye is counting fingers at 2 feet; this is not improved by glasses.

Some improvement in the opacity of the cornea is to be expected, and, as soon as the clearing of the cornea has become defined, an artificial pupil can be performed, which should materially improve the vision.

The injury she claims to have received is sufficient to account for the state of her eye.

All inflammation has subsided, and there is no reason why she should not return to work.

HENRY B. CHANDLER.

At the request of the insurer, Dr. Henry B. Chandler came before the arbitration committee on Wednesday, March 31, 1915, and testified as follows: —

On examination I found that the cause of the injury was traumatic; she had either received this injury by a piece of wire, as she stated, or she had been struck by some foreign body, which started the ulceration. It is impossible for me to state whether or not the injury was from a piece of wire. On further examination I found, as one always finds in these cases of Sæmisch operation, a contracted pupil, and the pupil is closed over with a fine membrane, so that her statement that she could count fingers was truthful. I tried her sight. I knew from the appearance of the eye that she did not have any sight, except to count fingers. The other eye was not affected by the injury. She certainly could get that injury out of an accident such as described. A foreign body of some description scratched the eye and the eye became ulcerated. A wire flying into her eye such as she described is cause enough. I think she can go to work. She will have some difficulty at first in finding the center of a thing. I do not think an operation should be performed now. She should wait until the opacity is cleared, which will clear to a certain extent, and she can have an artificial pupil at some place in the eye, which is not a dangerous operation. There was no injury to the optic nerve. The whole trouble is in front of the eye. The scar comes well up in the pupil, and the pupil is blocked up by this plastic material. She will have to have this operation done some time. It is a very simple operation with no danger. The fee for an operation of that kind is $50. For an operation of this kind 99 per cent. of the cases are successful. In that eye she has about 1/100 vision at the present time. She should have this operation in three months' time. Her eye is sensitive, and if she were exposed to a great deal of dust it would be irritated. Her right eye is all right so far as vision goes. This condition would not have been there without an accident. If she had come to work that morning, and her eyes looked as though she had a cold, and she rubbed the eye with a dirty handkerchief, this would not be enough to bring about her condition. I should say after the operation she will have

from 2/10 to 3/10 vision in that eye. My opinion is that there is no particular reason why she should not work. There is no necessity in her position to have two eyes to do that work. After the operation she will be laid up about ten days. She can do washing or scrubbing.

The committee of arbitration finds, upon all the evidence, that Margaret Foley, the injured employee, received an injury arising out of and in the course of her employment on Dec. 18, 1914; that she was totally incapacitated for work from Dec. 18, 1914, up to March 26, 1915; that she is entitled to medical services as provided by section 5, Part II. of the act; that, beginning on the fifteenth day, she is entitled to total disability compensation at the rate of $4 a week up to March 26, 1915, a period of twelve weeks, amounting to $48 compensation; and that the employee should immediately endeavor to obtain any work which she can perform, the insurer to pay her compensation in the future on the basis of her ability to earn wages.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

THOMAS F. BOYLE.
EDWARD CRESWELL.
CHARLES L. CARR.

Findings and Decision of the Industrial Accident Board on Review of Weekly Payments.

The claim for a review of weekly payments under Part III., section 12, having been filed, the Industrial Accident Board heard the parties and their witnesses at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, July 8, 1915, at 3.15 P.M., and finds and decides as follows: —

John C. Cronin represented the employee, and Samuel H. Batchelder represented the insurer.

All the material evidence follows: —

Margaret Foley, the injured employee, testified that she has worked only a few days since the hearing, and that was in a paper shop. Work became slack there, and they could not

keep her. She has tried to secure housework, washing and scrubbing, visiting the Day Nursery in South Boston twice daily for this purpose; but they did not have work for her. She stated that she is afraid to work in a place where there is machinery, and she is afraid to come to Boston to look for work, because she cannot see the teams and automobiles, and gets bewildered. She stated that she cannot work in Collins's — has not tried to go back there to work — because there is not light enough there, and because there are so many colors and different shapes that she feels sure she could not do the work. Also, she stated that in this shop there is a great deal of "picking up" to be done; this necessitates stooping continually, and she gets dizzy when she stoops. She stated further that she is willing to undergo an operation on her eye if she can be assured it will benefit her; but she is afraid that her eye might become worse.

Dr. Francis D. Donoghue, medical advisor, testified that the operation Mrs. Foley would have to undergo would be similar to the ordinary cataract operation — a new pupil would be made. He stated that the difficulty would be as follows: Mrs. Foley is able to do the sort of work she has always done now with one eye as well as two; *i.e.*, after first losing the sight of one eye it was hard for her, but now she has been accustomed to using the one eye; after the operation, for a while, — perhaps for six months or more, — she will not be able to work as well with the two eyes as she does at present with one eye. It will take some time to accustom herself to this new condition of her eyes. He stated that if he were in her place, doing the sort of work she does, he would keep on working — would not have the operation at this time; but if at some future time the vision in the good eye should become impaired he would have an operation then to get his sight back. It will take her some time to balance her condition if she has the operation now. She will be obliged to remain in the hospital three weeks after the operation.

By agreement the employee was referred by the Board to Dr. Henry B. Chandler, as the impartial eye specialist, for the purpose of determining whether or not an operation, or other remedial measures, will aid in restoring useful vision.

The report of the impartial specialist follows: —

I have examined the eyes of above claimant to-day.

In answer to my inquiry why she did not return to work her answer was that her vision was too poor to sort colored rags. I find, from my examination, that her right eye is astigmatic, and, with a proper glass, she has normal vision for distance and near. An artificial pupil on the left, or injured eye, should give immediate improvement of vision.

A week or ten days would be required to recover from an operation, after which she should be able to use her eyes, without discomfort, with the proper lenses.

The Industrial Accident Board finds, upon all the evidence, that the employee, Margaret Foley, is totally incapacitated for work by reason of the personal injury received by her on Dec. 18, 1914, as found by the committee of arbitration; that the weekly payments should be continued by the insurer at the minimum rate of $4 from the date of the last payment until further order of the Board; and that the insurer should furnish the operation and remedial measures recommended by the impartial physician without expense to the employee.

The Board reserves the right of further review under Part III., section 12, and the general provisions, of the act.

DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE NO. 1614.

WILLIAM H. PARNELL, *Employee.*
GENERAL ELECTRIC COMPANY, *Employer.*
MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*
FRANK T. LOUGEE, M.D., *Physician.*

MEDICAL FEES. REASONABLENESS OF SURGEON'S BILL FOR HERNIA OPERATION, AWARD OF $50.

The question was as to the reasonableness of the bill of $100 submitted by the surgeon for removing a strangulated hernia. He had refused to accept $50, the amount informally approved by the Industrial Accident Board. Attending physician had submitted bill of $37 covering visits and fee for etheriser.

Held, that $50 is a reasonable fee on an industrial basis.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Frank T. Lougee, M.D. *v.* Massachusetts Employees Insurance Association, this being case No. 1614 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, A. E. Pinanski, representing the insurer, and Dr. William G. Ward, representing the physician, heard the parties and their witnesses in the Aldermanic Chamber of the Lynn City Hall, Monday, March 29, 1915, at 10.30 A.M.

J. W. Cronin appeared as counsel for the insurer, and the physician was represented by Samuel H. Hollis.

William H. Parnell, an employee of the General Electric Company, in the course of his employment on March 13, 1914, underwent a lifting strain which aggravated an old hernia, and strangulation set in. He was operated upon by Dr. Frank T. Lougee of Lynn, who submitted a bill for $100 for the operation. The question was as to the reasonableness of the charge.

Dr. Charles Worthen, for the past thirteen years a practitioner in Lynn, testified that he was called to attend Parnell, and found the patient in intense pain. Being unable to reduce the rupture, he sent the patient to the Union Hospital, and summoned Dr. Lougee, who operated. He assisted, and Dr. Wm. Frasier etherized. The hernia was found to have protruded very badly, the ring was very tight, and the gut was almost gangrenous. The operation was successful, and there was a good recovery. He had submitted a bill for $37, covering sixteen visits at $2 each and Dr. Frasier's charge of $5 for etherizing.

Dr. Frank T. Lougee testified that he was a graduate of Dartmouth Medical School, had practiced in Lynn for twenty-eight years, and for the past twelve years had specialized in surgery. When called to the hospital he found Parnell suffering from great prostration, and shock. The intestine protruded a

great deal, and there was a question, even then, of resection, the ring having contracted to such a degree as to cut off circulation. It was an old hernia, and always — up to this time — had been reducible by manipulation. He simply cut the constricting band and replaced it. He had performed perhaps 100 operations for strangulated hernia, his prices varying. Before he knew the man was insured under the act he sent in his bill for $100. This was his ordinary price for a man of Parnell's earning power ($17.56 a week). He considered it a very bad case. He had to use groove direction before he could get down to do any cutting. If resection had been necessary to get the circulation going his price would have been $300. After he got through operating he asked Dr. Worthen where the man worked. This, of course, was before he sent his bill. He had returned a check of $50 for the operation, sent him by the insurance company, thinking it inadequate despite the fact that the medical advisory committee of the Industrial Accident Board had informally approved this as a reasonable charge upon his description of the case.

The committee of arbitration, having in mind that charges for medical services under this act should be made on an industrial basis, believes and finds that upon such a basis $50 is a proper and reasonable fee for such an operation as was described by Drs. Worthen and Lougee, and approves the payment of $50 as an operating fee to Dr. Lougee.

FRANK J. DONAHUE.
A. E. PINANSKI.

William G. Ward, M.D., dissents.

CASE NO. 1615.

PAUL POULIOT, *Employee.*
EDWARD D. WARD, *Employer.*
TRAVELERS INSURANCE COMPANY, *Insurer.*

DURATION OF INCAPACITY. CARPENTER UNABLE TO DO REGULAR WORK WHEN IT WAS OPEN TO HIM. INABILITY TO WORK IN SUMMER CLOSED LABOR MARKET TO HIM IN WINTER. ENTITLED TO COMPENSATION FOR LOSS OF CARPENTER'S WAGES IN WINTER.

The employee received a personal injury on June 7, 1913, while employed as a carpenter at $21 a week. The maximum compensation was paid up to July 18, 1914. From July 18 to November 1 he earned $18 a week for ten weeks as a carpenter. He was unable to do regular work, and secured employment as a weaver on November 1 at $11.50 a week. He could have obtained carpenter's work at regular wages if he were able to do it, and would have had steady employment for the winter.

Held, that he was entitled to partial compensation based on the amount he was able to earn and his wages of $21 a week at time of injury.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Paul Pouliot *v.* Travelers Insurance Company, this being case No. 1615 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, William C. Mellish, representing the insurer, and Charles F. Campbell, representing the employee, heard the parties and their witnesses at the Committee Room, City Hall, Worcester, Mass., Tuesday, March 16, 1915, at 1.30 P.M.

Charles J. O'Connell appeared as counsel for the employee, and Daniel F. Gay appeared for the insurer.

The employee was injured on June 7, 1913, while working for the Whitin Manufacturing Company, Northbridge, Mass. He was employed as a carpenter, and while standing on a plank lifting a roof timber the plank gave way, and he was precipitated to the ground, suffering a compound fracture of the right leg. His average weekly wages were $21. Compensation at the

rate of $10 per week was paid up to and including July 18, 1914.

The question was as to the duration of incapacity.

The material evidence was as follows: —

Between July 18 and November 1 the employee was able to secure ten weeks' work at carpentering, receiving $18 a week. He has not been able at any time to do the regular work of a carpenter because of the condition of his leg. On November 1 he secured employment as a weaver, and has worked steadily since, receiving $11.50 a week. Last fall he could have got carpenter's work at the regular union wages, but could not do it. If he had been able to do this work then he would have had regular employment as a carpenter during the winter. He feels that he could do his regular work now, and expects that he will be able to secure employment at such work in the spring.

The committee of arbitration finds that the employee, because of the injury that he sustained, has been up to the present time and is now unable to secure work at his regular employment, his injury incapacitating him for such work at a time when he could have secured it, and his incapacity at that time closing the labor market for carpenters to him during the winter months.

The committee finds that there is due the employee at the time of the hearing compensation as follows: five weeks at $10 a week, ten weeks at $1 a week, and nineteen and three-sevenths weeks at $4.25 a week.

Under this finding there is due the employee at the time of the hearing $142.58, compensation to continue during such time as the employee, on account of his injury, is unable to secure and perform work at his regular employment, based upon one-half the difference of the wages he is able to earn and his average weekly wages before the injury.

FRANK J. DONAHUE.
WILLIAM C. MELLISH.
CHARLES F. CAMPBELL.

CASE No. 1616.

ANNE U. KENNEY, SISTER AND ALLEGED DEPENDENT OF THOMAS H. KENNEY (DECEASED), *Employee.*
CITY OF BOSTON, *Employer.*

DEPENDENCY. WHETHER TOTAL OR PARTIAL. DEPENDENCY IS NOT TOTAL WHEN THE CLAIMANT HAS SEPARATE AND INDEPENDENT FUND OF HER OWN. SISTER OF EMPLOYEE, UNDER HIS PROMISE OF SUPPORT, TAKES CHARGE OF HOME. EMPLOYEE DIES AFTER SISTER HAS DISCHARGED TRUST FOR FIFTEEN YEARS. DURING ALL OF THAT TIME ALL OF THE SUPPORT OF THE CLAIMANT CAME FROM EMPLOYEE. CLAIMANT HAD SUM OF MONEY IN BANK WHICH HAD REMAINED UNDISTURBED FOR MANY YEARS. ALSO ONE-THIRD INTEREST IN REAL ESTATE ASSESSED FOR $1,300. SUPREME JUDICIAL COURT REMANDS CASE FOR FURTHER HEARING ON DEGREE OF DEPENDENCY AND AMOUNT OF COMPENSATION DUE.

It appears that the employee induced his sister to give up her employment fifteen years prior to his demise, and under his promise to support her the claimant took charge of his household. The family comprised an invalid mother, who died later; a father, who died in December, 1910; a younger sister, the employee and the claimant. The sister paid $15 a month for her board, and the employee furnished all other money needed to support the household, every month giving directly to the claimant $20 in money, and $3 a week, the rental received from a house owned by the three in common. He also paid the bills for rent, gas, coal and milk. In addition, he paid for all the claimant's clothes and gave her whatever she needed. There was no agreement in regard to wages. The claimant had the sum of $600 in the bank and a one-third interest in the real estate above referred to, which was assessed for $1,300, and was a paying investment.

Held, that the claimant was totally dependent upon the decedent.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appealed to Supreme Judicial Court.

Decision. — The court held that dependency was not total when claimant has separate and independent funds of her own.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Anne U. Kenney, sister and alleged dependent of Thomas A. Kenney, deceased,

v. City of Boston, this being case No. 1616 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, chairman, representing the Industrial Accident Board, Edwin P. Fitzgerald, representing the employer, and Dennis W. Haggerty, representing the dependent, heard the parties and their witnesses in the Hearing Room, Industrial Accident Board, Boston, Mass., Tuesday, March 16, 1915, at 10 A.M. and Monday, March 29, 1915, at 9.30 A.M.

James N. Graham appeared for the dependent, and Walter J. O'Malley appeared for the city of Boston, as counsel.

The question at issue was whether or not the employee, Thomas A. Kenney, who received a personal injury arising out of and in the course of his employment on Dec. 26, 1914, dying on Jan. 5, 1915, was entitled to compensation from the city of Boston, under chapter 807 of the Acts of 1913, which provided for the payment of benefits, under the Workmen's Compensation Act, to "laborers, workmen and mechanics." The city of Boston claimed that the said Thomas A. Kenney was not a laborer, workman or mechanic.

The employee was a janitor in the employ of the city of Boston, at Curtis Hall, and received the injury which resulted in his death while fixing a pump in the swimming pool of Curtis Hall on Dec. 26, 1914. His finger was jammed in the pump, and later blood poisoning set in causing his death on Jan. 5, 1915. The employee was unmarried and lived at home with his two sisters, one of whom, Anne U. Kenney, kept house, and was wholly dependent upon him for support at the time of his death. The other sister, Jane E. Kenney, earned her own living. The average weekly wages of the employee were $23.01.

Warren P. Dudley, secretary of the Civil Service Commission, testified that he looked up the civil service status of Thomas A. Kenney and found him rated as a janitor in charge of Curtis Hall, the appointment being made Feb. 7, 1902. He further stated that the labor service was divided into two classes, — first, what is known as the official service, or higher grade; and second, the labor service. The official service included those who took the civil service examination, and the

labor service those who simply registered and then waited their turn for work, there being no competitive examination. Thomas A. Kenney was in the official service. Mr. Dudley further stated that this division was simply made for the purpose of classification, and the fact that a man was in the official grade was no indication that he did not labor with his hands.

Anne U. Kenney, sister of the deceased, testified that she remained at home for about fifteen years at the request of her brother, who told her that he would look out for her. Her brother gave her $20 per month directly, and also paid the milk and gas bill, together with the rent. The rent was $25 per month and the gas bill about $2.50. Her brother paid for all her clothes, and whenever she wished for anything for herself she went to him. There was no agreement in regard to wages. In addition to the above her brother gave her $3 per week, which was the rent from a house which she, her sister and her brother owned jointly. He gave her $3 per week, although the tenants did not pay regularly. At the time of his death the rent was about a year in arrears. She had $600 in the bank of her own, which she had saved previous to the fifteen years she remained at home, and since that time nothing had been added to it. Her sister, Jane E. Kenney, gave her $15 per month for board. All the support she received came from her brother.

Jane E. Kenney, another sister of the deceased, testified that she paid $15 per month for her board, as she did not feel like being dependent. She did not consider that much, and felt she could not get along on that amount anywhere else except at home. Her mother became an invalid about fifteen years ago, and her brother asked her sister to stay at home, as she was the eldest, and take care of the home. Her brother said he would pay and run the house. Her sister had no other income except what her brother gave to her. On the house which they owned jointly her brother gave her sister $3 per week income from it, and he paid all the expenses and taxes of it. To her knowledge her sister did not receive any wages. The first of the month she saw her brother give her sister $20, and he also gave $3 every week. He took care of the larger bills, the coal and rent. She herself was a piece worker, and some weeks made $12

and then again would go as low as $4 and $5. During the last year she had not made very much as she did not work steadily, but remained home a good deal.

Dr. Francis P. Broderick testified that he knew Thomas H. Kenney and treated him Dec. 26, 1914, for a crushed finger. He washed the finger thoroughly with bichloride of mercury solution, soaked it and cleaned it as much as possible, and put a few stitches in the side, leaving an opening for drainage. The employee went to see Dr. O'Keefe the following day, and Dr. O'Keefe sent him back on the 28th of December, 1914. He dressed the finger and continued to do so until the 31st. There was more or less of a septic condition present.

Dr. D. T. O'Keefe, a physician for twenty-three years, testified that he knew Thomas H. Kenney for about twenty-three years, and for that length of time Kenney's physical condition had been good. He had only treated Kenney once for an attack of colic. After the injury he first saw the employee Dec. 29, 1914, at which time he was under the care of Dr. Broderick. His finger was gangrenous and its condition very dangerous, so that he decided to have Kenney sent to the Carney Hospital on Saturday. The following Monday Dr. Mahoney amputated the left finger, and several incisions were made in the arm. The incisions were made for drainage, and the arm was swollen up to the elbow and beyond, — a symptom of blood poisoning. To the best of his recollection Kenney told him that he crushed his finger in a pump. The cause of the death of the employee was streptococcous septicæmia.

Thomas J. Vaughn, heating inspector for the public building department, testified that he knew Thomas H. Kenney, who had been put in charge of Curtis Hall before the building was completed, and that he ran the boiler and did all the work. When the building was finished Kenney was made custodian and had other men under him. He remembered making the statement that he had seen Kenney invariably doing something, — cleaning the swimming pool, sweeping floors, shoveling coal, cleaning windows, tending the boilers and repairing the pumps. However, he could not remember seeing Kenney do these things for the last year and a half. At the time of the accident Mr. Kenney had under him two janitors, two firemen

and some scrubwomen. Kenney was responsible for keeping the building clean, and if he did not have enough help he would have to do it himself.

Michael A. Martin, stationary fireman at Curtis Hall, testified that on Dec. 26, 1914, he was attending to the fires, as it was a very cold morning. Mr. Kenney came down, and the pump was not working properly at the time, making a grinding noise. Mr. Kenney looked at it and suddenly shouted. His little finger on the left hand had been crushed. They bandaged the cut up and then Kenney went home. Mr. Martin had seen Mr. Kenney doing all kinds of general work, — sweeping floors, shoveling coal, washing windows, putting sand on the walks, looking after the lawns, etc. He also saw him bank the fires, work with the cylinder heads of the pump and put out ash barrels. There are five men and seven women employed in the building, of three floors. There are six rooms besides the swimming pool, shower bath and gymnasium. One of the janitors came on at 2 o'clock and relieved Mr. Kenney. This janitor looked after the lights and did the sweeping. The night man came on at 10 o'clock and worked until morning, doing the same work. He and Mr. Beale were the firemen working in the boiler room, and sometimes Mr. Kenney helped out. Three weeks before the accident Kenney had shoveled coal for him while he went out to lunch. This was a frequent occurrence. Mr. Kenney was always on the job and was a good man.

Richard A. Lynch, superintendent of public buildings for the city of Boston since May, 1914, testified that he was familiar with Thomas H. Kenney, whose duties were simply those of supervision over Curtis Hall, — to take care of the building and see that the men under him kept it clean and did the work necessary. If Kenney did any work it was voluntary on his part. No complaints had ever been received with regard to the condition of Curtis Hall, or that more help was needed. If Mr. Kenney complained that he did not have enough help, the matter would be investigated and help given if necessary. He further stated that if he had known that Kenney was doing such work as cleaning windows, tending boilers, etc., he would not have found fault or discharged the man.

Jeremiah W. O'Brien, superintendent of janitors, testified that

he had been acquainted with Thomas H. Kenney since February, 1902. Curtis Hall was opened in February, 1912, and Mr. Kenney was put in charge and did all the work alone. After the building was burnt and rebuilt, Mr. Kenney put in the boiler pump, under Mr. Fish as superintendent, and was later given six scrubwomen and a night watchman to help him. The following year, 1913, he was given an assistant. At the time the law was passed giving employees one day off in seven, Mr. Fish, the superintendent of public buildings, instructed him to inform Mr. Kenney that he was to assist in the work generally and do any and all kinds of work in Curtis Hall. Mr. Lynch, superintendent of buildings since May, 1914, had not changed these instructions.

Frederick C. Ward, chief clerk in the public buildings department, looked up the pay roll of Thomas A. Kenney and found that for the week of Jan. 8, 1914, Kenney received $23.01, and a salary of $1,200 per year. Also for week ending Sept. 18, 1913, Kenney received the same salary.

The evidence shows that the employee, Thomas H. Kenney, received the personal injury which caused his death while performing his duty as a janitor in the employ of the city of Boston. He was repairing a pump, making use of his ability and skill as a workman to make the repairs, and while so engaged had his finger jammed, blood poisoning setting in and his demise following.

The committee of arbitration finds, upon all the evidence, that Thomas H. Kenney, a janitor in the employ of the city of Boston, was a "workman" within the meaning of the word as used in the phrase "laborers, workmen and mechanics," in section 1, chapter 807, Acts of 1913, and the city of Boston, having accepted said chapter by vote of its citizens, is required to pay the benefits provided by the Workmen's Compensation Act, provided the personal injury received by him on Dec. 26, 1914, arose out of and in the course of his employment.

The committee further finds that the personal injury received by Thomas H. Kenney on Dec. 26, 1914, arose out of and in the course of his employment; that his death on Jan. 8, 1915, was the result of said personal injury; that Anne U. Kenney, the sister of the employee, was wholly dependent for support

upon him at the time of his injury and death; that his average weekly wages were $23.01; that the said Anne U. Kenney is entitled to a weekly compensation of $10 for a period of four hundred weeks from the date of the injury, that is, from Dec. 26, 1914.

The committee further finds that the income from the house owned jointly by Anne U. Kenney, Jane E. Kenney and Thomas H. Kenney was not a material factor in relieving the claimant and sister of the deceased employee, Anne U. Kenney, from her status of total dependency upon the employee. The evidence shows that the rental of $3 a week was not paid regularly, and at the time of the injury to the employee was about a year in arrears. The payment of the sum of $3 by the deceased employee regularly, whether rent was paid him or not, was a gratuitous act on his part, and does not relieve the city of Boston from its obligation to pay the dependent the weekly compensation due on account of her total dependency for support upon the earnings of her brother, Thomas H. Kenney. The employer's request for rulings, attached hereto, are refused, in so far as they are inconsistent with these findings.

JOSEPH A. PARKS.
DENNIS W. HAGGERTY.

Edwin P. Fitzgerald dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, May 13, 1915, at 11.30 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that the claimant, Anne U. Kenney, first decided to remain at home and take charge of the home fifteen years ago, at the request of and upon the promise of support

from her brother, Thomas H. Kenney, the deceased employee, and that during that period and at the time of his injury and death all her support came from the earnings of Thomas H. Kenney. She was, in fact, wholly dependent for support upon the earnings of the said Thomas H. Kenney at the time of his injury.

Prior to the beginning of her fifteen years at home she had saved a sum of money to which no additions had been made, which now amounted to a total of $600. The claimant also had a one-third interest in a piece of real estate which yielded a gross income of $3 weekly when rented and the rental was paid, but at the time of the injury to the deceased this rental was one year in arrears.

The employee, Thomas H. Kenney, was a janitor in the employment of the city of Boston, and received the personal injury which caused his death while repairing a pump in the swimming pool at Curtis Hall, at which place he was employed. His fingers were jammed, blood poisoning set in and death ensued in consequence thereof.

The Board finds, upon all the evidence, that Thomas H. Kenney was a workman in the employment of the city of Boston; that while employed as a workman he received a personal injury arising out of and in the course of his employment, said personal injury resulting in the death of the employee; that the average weekly wages of the employee were $23.01; that the claimant, Anne U. Kenney, a sister of the employee, was wholly dependent upon his earnings for support at the time of his injury; that the said Anne U. Kenney is entitled to a weekly compensation of $10 for a period of four hundred weeks from the date of the injury, that is, from Dec. 26, 1914, from the city of Boston.

The employer's requests for rulings, attached hereto, are dealt with as follows: —

Nos. 1 to 8, inclusive, are refused.

No. 9 is given, the evidence showing that the dependent, Anne U. Kenney, was wholly dependent for support upon Thomas H. Kenney at the time of his injury and death.

Nos. 1(*a*), 2(*a*) and 3(*a*) are refused. Dependency is a question of fact as at the time of the occurrence of the injury.

At the time of the injury the claimant, Anne U. Kenney, was in fact wholly dependent for support upon the deceased employee. The possession of the money in the bank, accumulated many years prior to the date of the injury, the one-third interest in an estate the rental of which was one year in arrears, and the ability of the employee to work do not alter this fact.

With regard to Nos. 1(*b*), 2(*b*) and 3(*b*) the Board rules that, in accordance with the definition of dependency given in the statute, the claimant, Anne U. Kenney, was wholly dependent for support upon the earnings of the employee at the time of the injury. Part V., section 2, provides "Dependents" shall mean members of the employee's family or next of kin who were wholly or partly dependent upon the earnings of the employee for support at the time of the injury.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

Employer's Requests for Rulings.

And now comes the city of Boston and respectfully requests this committee of arbitration to make the following rulings: —

First. — On all the evidence the alleged plaintiff, Anne U. Kenney, is not entitled to compensation.

Second. — The said employee, Thomas H. Kenney, is not a workman, laborer or mechanic within the meaning of section 6 of chapter 807 of the Acts of 1913.

Third. — Unless the said Thomas H. Kenney contributed his entire salary for the support of the said Anne U. Kenney she cannot be found to have been entirely dependent upon the said Thomas H. Kenney.

Fourth. — Upon all the evidence the said Anne U. Kenney was not entirely dependent upon the said Thomas H. Kenney.

Fifth. — Upon all the evidence the said Anne U. Kenney was not partially dependent upon the said Thomas H. Kenney.

Sixth. — If the said Thomas H. Kenney was supporting the said Anne U. Kenney at the time of his injury, and the said

Anne U. Kenney in return for said support was performing for him the work of housekeeper, she cannot be found to have been dependent upon him.

Seventh. — If the said Anne U. Kenney was serving as housekeeper for the said Thomas H. Kenney at the time of his injury, and was receiving as compensation for said service her support together with a payment of money, she cannot be found to have been dependent upon the said Thomas H. Kenney at the time of his injury.

Eighth. — If the said Thomas H. Kenney refrained from making a will, and if his entire estate descended as a matter of law to the said Anne U. Kenney and one other sister, who were his only heirs at law, share and share alike, it may be found that the said Thomas H. Kenney contemplated, in thus refraining from making a will, to render full and entire payment to the said Anne U. Kenney for any services rendered to him by the said Anne U. Kenney in his lifetime.

Ninth. — The burden of proof is upon the said Anne U. Kenney to show that she was dependent upon the said Thomas H. Kenney at the time of his injury, and also to show to what extent she was dependent upon him.

Employer's Requests for Additional Rulings.

And now comes the above-named city of Boston and respectfully requests the committee of arbitration to make the following rulings: —

1(*a*) If the said Anne U. Kenney was possessed of $600 at the time of and for several years prior to the death of said Thomas H. Kenney, which was deposited at interest in one of the savings banks of the city of Boston, she was not entirely dependent on the said Thomas H. Kenney at the time of his injuries and death.

2(*a*) If the said Anne U. Kenney was at the time of and for several years prior to the death of said Thomas H. Kenney the owner of one-third of the fee of a lot of land and house thereon, situated on Union Avenue in the city of Boston, and if said house was assessed for about $1,300 and yielded a rent of $3 a week, the said Anne U. Kenney was not entirely dependent

upon the said Thomas H. Kenney at the time of the injuries and decease of the said Thomas H. Kenney, even if the rent was not paid punctually every week by the tenants of said house.

3(*a*) If the said Anne U. Kenney left her work some fifteen years prior to the death of said Thomas H. Kenney to take care of a sick mother in return for support from said Thomas H. Kenney, and if the said mother died and the said Anne U. Kenney still continued her work and stayed at home to take care of a sick father, and the said father died, and the said Anne U. Kenney still stayed at home and discontinued her work although perfectly able to work, and kept house for herself, her sister Jane Kenney and her brother, the said Thomas H. Kenney, and in return therefor received her lodging, board and clothes from her brother, Thomas H. Kenney, at the time of and several years prior to the death of said Thomas H. Kenney, she cannot be said to have been entirely dependent upon the said Thomas H. Kenney at the time of his injuries and death.

By its Attorney,

WALTER J. O'MALLEY,

Assistant Corporation Counsel.

Requests for Further Rulings.

And now comes the city of Boston, the employer in the above-entitled cause, and asks this Board to grant all the requests for rulings that have already been filed by the said city of Boston with the committee of arbitration in the above-entitled cause and are now before this Board on review; and the said city further asks this Board to make in addition the following rulings: —

First. — "Dependency," as used in chapter 751 of the Acts of 1911, and the acts in amendment thereof and in addition thereto, when said dependency is a question of fact, means inability to support one's self either wholly or partially, and in consequence thereof the receiving of aid from another.

Second. — No individual can be held under chapter 751 of the Acts of 1911, and the acts in amendment thereof and in

addition thereto, to be entirely dependent upon another when dependency is not presumed but is a question of fact, if the individual seeking to be held dependent has property or money of his or her own.

Third. — Dependency as contemplated by chapter 751 of the Acts of 1911, and the acts in amendment thereof and in addition thereto, is not, when the said act does not presume a total dependency, a matter of agreement between the parties, but a question of fact.

WALTER J. O'MALLEY.

Decree of Supreme Judicial Court on Appeal.

DECOURCY, J. The city does not contest the findings of the Industrial Accident Board, that Thomas H. Kenney was a "workman" in its employment, within the scope of St. 1913, c. 807 (which provides compensation for certain public employees), and that the personal injury which resulted in his death arose out of and in the course of his employment. The controversy relates only to the finding and decision of the Board that the claimant, Anne U. Kenney, a sister of the employee, was wholly dependent upon his earnings for support at the time of his injury.

Although there is no appeal from the finding of the Board upon questions of fact (Diaz's Case, 217 Mass. 36; Bentley's Case, 217 Mass. 79), nevertheless where all the evidence is reported, there is open for revision the question of law whether there was any evidence to support the findings. There also is necessarily involved the inquiry whether the Board, in applying law to the facts, correctly interpreted the terms "wholly" and "partially dependent," as used in the Workmen's Compensation Act. (Herrick's Case, 217 Mass. 111; Sponatski's Case, 220 Mass. 526.)

On the issue of the claimant's dependency upon her brother, Thomas H. Kenney, the Board was justified in finding the following facts: fifteen years before his death, and under his promise to support her, the claimant was induced to remain at home, and take charge of the household. The family then comprised their invalid mother (who died later), their father

(who died in December, 1910), a younger sister, Jane E. Kenney, the brother, Thomas H. Kenney (who died Jan. 15, 1915), and the claimant. The sister Jane paid $15 a month for her board. Thomas furnished all other money needed to support the household, every month giving directly to the claimant $20 in money, and $3 a week, the rental received from a house owned by the three in common. He also paid the bills for rent, gas, coal and milk. In addition, he paid for all her clothes, and gave her whatever she needed. There was no agreement in regard to wages.

St. 1913, c. 807, adopted the provisions for compensation set forth in the Workmen's Compensation Act. Accordingly, in case of fatal injury to the workmen employed by the city, a certain weekly payment for a specified period is to be made to "the dependents of the employee, wholly dependent upon his earnings for support at the time of the injury." If the employee leaves "dependents only partially dependent upon his earnings for support at the time of his injury," they are to receive a smaller payment. (St. 1911, c. 751, as amended by St. 1914, c. 708, § 2.) A husband, wife or child under certain circumstances is "conclusively presumed to be wholly dependent for support upon a deceased employee; and in all other cases questions of dependency, in whole or in part, are to be determined in accordance with the fact, as the fact may be at the time of the injury." (Pt. II., § 6 of the act, as amended by St. 1914, c. 708, § 3.) The word "dependents," as used in the act, is therein defined as meaning "members of the employee's family or next of kin who were wholly or partly dependent upon the earnings of the employee for support at the time of the injury." (Pt. V., § 2.) It is the contention of the employer that on the facts found here, there is no warrant for a finding that the claimant was a "dependent," within the meaning of that word as used in the act.

It has been pointed out that this statute is based on the theory of compensation. (See Cripp's Case, 216 Mass. 586; Nelson's Case, 217 Mass. 467.) In the case at bar the earnings of the employee were the chief source to which the claimant looked for her maintenance and support. Apparently his regular and substantial payments were given by him and received

by her not as a gratuity but in recognition of a moral if not a legal obligation to support her, in accordance with the promise made when he induced her to become a nonproducer. This is enough to create a relation of dependency as a basis of compensation. (Caliendo's Case, 219 Mass. 498; Main Colliery Co., Limited, *v.* Davies (1900), A. C. 358; Houlihan *v.* Connecticut River Railroad, 164 Mass. 555; Wilber *v.* New England Order of Protection, 192 Mass. 477; Mehan *v.* Lowell Electric Light Corp., 192 Mass. 53.) And, adopting what was said in Herrick's Case, 217 Mass. 111, 113, "that but for her sense of duty, because she thought that her brother needed her care, she might have continued to earn enough for her own support, and to be independent of him, cannot be decisive as matter of law against her claim." (Howells *v.* Vivian & Sons, 4 W. C. C. 106.) The contention that the claimant was employed as a housekeeper, under a contract for wages, is disposed of by the findings of fact fully warranted.

While we are of opinion that the facts warrant a finding that the claimant was "dependent," we do not think there was warrant for the finding that she was wholly dependent upon the employee's earnings for support at the time of his injury. Admittedly she had $600 in bank, and one-third interest in unincumbered and productive real estate in Boston that was assessed for $1,300. This separate and independent fund of her own, available for her support, is too substantial to be ignored. In Buckley's Case, 218 Mass. 354, the claimant was frail, and the interest she had in a piece of real estate was of little, if any, value for use or for sale. In Carter's Case, also, the claimant was too ill to go out to work, and the fact that she had saved $100, of which $50 or $60 had been used since the death of the employee, was deemed to have practically no bearing upon the question of her total dependency. We do not take into consideration what has come to her as one of his heirs, because the act points to matters antecedent to the employee's death. (Pryce *v.* Penrikyber Navigation Colliery Co. (1902), 1 K. B. 221.) But wholly aside from that, on the facts, the employer in the present case was entitled to the ruling which in substance he requested, that the claimant was not shown to be wholly dependent upon the said Thomas H.

Kenney. In other respects the record discloses no error of law. That the claimant was next of kin of the deceased employee is not disputed.

It follows from what has been said that the case should be remanded to the Industrial Accident Board for further hearing, in accordance with this opinion.

Decree reversed.

CASE No. 1618.

WILLIAM DELEU, *Employee.*
GEORGE T. RENDLE COMPANY, *Employer.*
ZURICH GENERAL ACCIDENT AND LIABILITY INSURANCE COMPANY, LTD., *Insurer.*

ARISING OUT OF THE EMPLOYMENT. SCOPE OF EMPLOYMENT. EMPLOYEE DEPARTS FROM SCOPE OF HIS EMPLOYMENT WHEN HE LEAVES ON AN ERRAND OF HIS OWN. CLAIM DISMISSED.

The record shows that the employee left his place of employment by a way not used customarily by employees in leaving the premises, and that the injury occurred while he was on an errand of his own, having no relation to his employment.

Held, that the employee is not entitled to compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of William DeLeu *v.* Zurich General Accident and Liability Insurance Company, Ltd., this being case No. 1618 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, representing the Industrial Accident Board, chairman, Grenville S. MacFarland, representing the employee, and Thomas F. Vahey, representing the insurer, heard the parties and their witnesses at the Hearing Room, New Albion Building, Boston, Mass., on Tuesday, March 23, 1915, at 10 A.M., continuing on Friday, April 16, at 9.30 A.M.

The question at issue was whether or not the injury sus-

tained by the employee on Jan. 12, 1915, arose out of and in the course of his employment.

William DeLeu, an engineer employed on a lighter on Jan. 12, 1914, testified that he was going ashore on that date to get his lunch, slipped on a piece of timber on an old wharf connected with the employer's property, and fell, sustaining a dislocated hip. He picked himself up and dragged himself ashore, suffering pain, and went home. He sent immediately for Dr. Hermann, who treated him. He was incapacitated five and a half weeks. The accident occurred between half past 10 and quarter of 11. He did not recall the conversation that took place between his fellow employees and himself just before he left the lighter. He had talked with Mr. Rendle and Daniel and John McCormick about compensation when they called upon him at his home the day after the injury, but he stated that he was suffering so much that day he cannot recall what was said. He did not recall that he had said he was going ashore to put up his watch at "Mike's" to buy a pint of rum. He had gone to work early that morning, about half past 5 or 6 o'clock; his regular lunch hour was 12 o'clock; he often left his work to go to the corner for something to eat or for tobacco. He had been working there two weeks, but that was the first time they had been laid up alongside the sloop. The easiest way to go from the lighter was to step from it into the sloop, and then to go up a ladder to the storeroom and downstairs; he could have gone that way.

Daniel McCormick testified that he was working with the employee on the day of the injury, and that the best way to get ashore was to step aboard the sloop, walk across and go up an iron ladder to the wharf; that was the usual way the men went. There is a board fence to the right of Mr. Rendle's property that shuts it off from the adjoining property, the city yards. The employee told him, before he left the lighter that morning, that he was going to "Mike's," as he had a $1 Ingersoll watch which he was going to "put up" for 25 cents to get a pint of rum. When he started to leave the lighter Mr. McCormick told the employee that he had better not go the way he was going, and asked him why he did not go the right way; he answered that he did not want Mr. Rendle to see him.

He could go by the board fence without being seen. The "cap" was not on Mr. Rendle's property; the tide was out, and the employee stepped on the "cap," then caught hold of it and slid on the pile of lumber beneath. He got on the timber and took three or four steps before he slipped. He got up and walked up the passage through the city yard. Mr. McCormick did not see him again until the second day afterwards. The lumber that the employee fell on was also in the city yards. He went to see the employee at his home. The doctor was there and stated that he had been told that the employee had fallen a distance of 30 or 35 feet, while running a line according to instructions from Mr. McCormick. After talking the matter over, DeLeu admitted that he was wrong on that point, and admitted the facts as they were. He had asked Mr. Rendle to "help him out" in the matter of compensation, saying that Mr. Rendle would "be nothing out" and it would "help him a lot." Mr. Rendle refused. Mr. McCormick had seen DeLeu leave the lighter several times to go ashore, and he went the way of the sloop and the ladder.

John McCormick corroborated the testimony of Daniel McCormick in regard to DeLeu's intention to "hock" his watch at "Mike's" to get some rum, and to the warning of Mr. McCormick that he was making a mistake in going the way he did. He himself always went the usual way by the sloop and the ladder to the wharf. He heard the employee say he did not want to go the usual way, and that Mr. Rendle would not see him if he went the other way; he could get off quicker. He saw him fall and pick himself up and walk off; he never made any outcry and did not come back. He called on the employee with Mr. Rendle and Daniel McCormick and heard the talk about compensation; he corroborated the statements of Daniel McCormick in this respect.

George T. Rendle, the employer, testified that at the request of Dr. Hermann he called at the home of the employee the next day after the injury and took with him Daniel and John McCormick, in order to find out whether or not the employee was injured in the course of his employment; he wished him to get compensation if he was entitled to it. He met the doctor

there, who said DeLeu had told him that he fell 35 feet while making a wire fast, whereupon DeLeu said, "I said a line." Then Daniel McCormick and the employee talked the matter over. DeLeu at first insisted that he was running a line by McCormick's orders when he fell, and when McCormick said he did not run a line that day, DeLeu finally said, "No, it was going ashore I got hurt." McCormick said, "You walked along on a 10-inch cap when you went ashore. I saw you when you fell. You did not say anything about being hurt, but picked yourself up and walked away. You had said you were going down to Sumner Street to 'hock' a watch and get a 25-cent pint of rum." The employee admitted these facts also. Rendle said that on Washington's Birthday DeLeu had done a little work for him, and told him he was satisfied that he was not entitled to compensation. The employee had asked him to make out a report in his favor, which he had refused to do.

Dr. Louis Alfred Hermann testified that the first time he saw the employee, DeLeu told him that he was doing some wiring according to instructions and fell over a board in so doing, falling a distance of 10 to 12 feet. The doctor got in touch with the employer later and met him at the house of the employee, in company with Daniel and John McCormick, when DeLeu told the story of having been injured as he was going to his dinner. At this time he was accused by one of the McCormicks of having been on the way to pawn his watch to buy liquor, which he denied, calling McCormick a liar. The doctor asked him why he had told these different stories, and he said he was in great pain the first day and did not realize just what he was saying, and that he was a stranger and wanted to be sure that he would get treatment. He insisted that he was on his way to get his lunch when he fell, but he then said that he fell only 2 or 3 feet. One of the McCormicks said that there was an easier way than DeLeu had taken to go to dinner; in fact, quite a few words passed among the employer, the McCormicks and DeLeu. He had suffered a great deal of pain the first day, and the doctor had suggested his going to the hospital, but he would not hear of it. It was easy to be seen that there was a fracture or compound dislocation; the bone

was almost protruding out from the hip joint; there was an opening in the leg. He attended the employee nearly every day for two weeks, and treated him for five weeks.

On Friday, May 7, 1915, the committee of arbitration viewed the premises of the employer where the accident occurred, this view indicating that the testimony of Daniel and John McCormick was correct, that the employee had avoided taking the way customarily used by employees in leaving the premises. DeLeu evidently had gone around another way in order to avoid the possibility of being seen by Mr. Rendle from his window in the office where he knew his employer was at the time of his departure.

The committee of arbitration finds, upon all the evidence, that the employee, William DeLeu, did not receive a personal injury arising out of and in the course of his employment, and that the injury occurred while he was outside of the scope of his employment on an errand of his own, having no relation whatsoever to said employment. Therefore the claim of the employee for compensation is dismissed.

JOSEPH A. PARKS.
GRENVILLE S. MACFARLAND.
THOMAS F. VAHEY.

CASE No. 1619.

ASONTA BARTONI, WIDOW OF JOHN BARTONI, *Employee.*
ROCKPORT GRANITE COMPANY, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

AVERAGE WEEKLY WAGES. MEANING OF PHRASE. MEASURE OF COMPENSATION DIFFERENT FROM THAT ESTABLISHED IN ENGLISH ACT. MASSACHUSETTS ACT ESTABLISHES A NEW DEFINITION OF "AVERAGE WEEKLY WAGES." AMOUNT UPON WHICH COMPENSATION IS BASED, ASCERTAINED BY DIVIDING THE TOTAL WAGES RECEIVED DURING A YEAR BY THE WEEKS DURING WHICH LABOR ACTUALLY IS RENDERED. THIS IS AN ARBITRARY DEFINITION OF THE TERM. "LOST TIME" DEFINED. WHEN EMPLOYEE IS UNABLE TO WORK BY REASON OF WEATHER CONDITIONS, THAT IS LOST TIME. IT MEANS THE TIME WHEN ONE MIGHT HAVE WORKED BUT WAS PREVENTED. IT IS COMMON SPEECH TO SAY OF THE CARPENTER, THE MASON AND OTHERS ENGAGED IN OUTDOOR EMPLOYMENT THAT THEY HAVE LOST TIME BECAUSE OF RAIN OR SNOW OR COLD. DECEDENT SURVIVED BY WIDOW AND MINOR CHILD. WIDOW DIES AND ADMINISTRATOR MAKES CLAIM. BOARD HOLDS THAT COMPENSATION BECAME VESTED AT DEATH OF WIDOW. COURT HOLDS THAT THIS CASE COMES WITHIN THE EXCEPTION NOTED IN MURPHY'S CASE, ANTE. MINOR CHILD A DEPENDENT UNDER STATUTE. CASE REMANDED FOR FURTHER HEARING AND EXERCISE OF THE SUPERVISORY POWER OF BOARD.

The main question involved in this case was that of "average weekly wages." A second question was as to whether the compensation due under the act became vested upon the death of the dependent widow. The evidence shows that the employee had been a laborer at the granite works and that during the year preceding the injury he had not worked for a period of 12.97 weeks because weather conditions did not permit. His total earnings were $449.76, and the Board found that his average weekly wages were $11.53; that is, the total sum earned by the employee was divided by the number of weeks during which labor actually was rendered. At the time of the employee's death a widow and a minor child, aged fourteen, survived. His widow died before compensation had been started, and her administrator claimed compensation under the act.

Held, that the average weekly wages of the employee were $11.53, and that the compensation due under the statute becomes vested upon the death of the dependent.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appealed to the Supreme Judicial Court.

Decision. — The Supreme Judicial Court decides that the average weekly wages of the employee were correctly stated by the Board, and that the case should be remanded to the Board for the exercise of their supervisory power to award compensation to the minor child.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Asonta Bartoni, widow of John Bartoni, *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1619 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, W. Lloyd Allen, representing the insurer, and John J. Cunningham, representing the employee, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Gloucester, Mass., on Friday, March 5, 1915, at 11 A.M.

John M. Marshall appeared as counsel for the employee, and John M. Morrison appeared as counsel for the insurer.

It was agreed between counsel for the parties, and the committee accordingly finds, that the deceased employee on Aug. 26, 1913, received an injury arising out of and in the course of his employment. His occupation at the time was that of a laborer at the Rockport Granite Company. His total earnings during the year preceding the injury were $449.76, and during this year he did not work, owing to the conditions of weather not permitting, for a period of 12.97 weeks. There was no evidence that the employee had any other reason than weather conditions for not working at such times. It was also included in said agreed facts that the average total earnings of other employees doing similar work during the year preceding the injury, in the same grade and for said employer, were substantially the same as those of the deceased employee.

The deceased employee left a widow, Asonta Bartoni, and

five children, — John Bartoni, age twenty-nine years; Joseph Bartoni, twenty-seven years; Frances Colombo, twenty-six years; Rosa Cardini, twenty-four years; and Daniel Bartoni, fourteen years. The widow, Asonta Bartoni, died on Feb. 3, 1914, following the death of the deceased employee. Joseph Bartoni has been appointed administrator of her estate. No compensation has been paid up to date by reason of pending negotiations for a lump sum. A lump sum agreement for $900 was made by the administrator of the estate of John Bartoni, the deceased employee, and the insurer after the death of the widow, which was not approved by the Board because of its opinion that the amount was inadequate. The brothers and sisters of the youngest child, Daniel Bartoni, out of regard for his needs, have agreed to release to him their rights to compensation.

Louis A. Rogers, assistant treasurer of the Rockport Granite Company, testified that when the employee could not work during the year preceding this injury, it was due to weather conditions which prevented him from so doing; that the employee had not been ill or prevented by any other cause than the weather from working during said time; that when he did not work on account of the weather for the Rockport Granite Company he did not work elsewhere, and it was not customary for the other employees of the employer to work elsewhere when the weather prevented them working for said company; and that the average earnings of the other employees in the same grade of work as the deceased employee during the year preceding this injury were substantially the same as those of the deceased employee.

The questions raised at the hearing were, first, should the time when the employee did not work during the year preceding his injury by reason of the weather which prevented him from working, be deducted from the fifty-two calendar weeks as lost time, within the meaning of the act, or should his total earnings during the preceding year be divided by fifty-two, in computing his average weekly wages?

The committee rules and decides that it was the object and intention of the Legislature in enacting the Workmen's Compensation Act, and particularly in the phraseology of the defi-

nition of average weekly wages, to reach the real and true average of employees for a year preceding their injury as nearly and practically as possible; that the deduction for lost time was intended to apply practically to continuous employments and not to time in which the employee did not work by reason of weather conditions which are bound to interfere and prevent work during every year for a certain amount of time, and where the circumstances of the employment were such that during this time when the employee could not work by reason of weather conditions he was unable to make any earnings, and as a practice and custom actually did make no earnings elsewhere; and that, therefore, the time of 12.97 weeks in which the employee did not perform his outdoor work, and was prevented from performing it by the usual weather conditions, should not be deducted from the fifty-two weeks of the calendar year in computing his average weekly earnings for said year.

The second question raised at the hearing was, did the right to compensation to which the widow, Asonta Bartoni, became entitled on the death of the employee, as his sole and conclusively presumed dependent, vest in her so that the right to the same passes to her estate as her property for the remainder of the statutory period of three hundred weeks after her death, viz., two hundred and seventy-seven weeks?

Counsel for the insurer contended that the right to compensation of the widow as the total dependent entitled thereto did not vest in her for the period of three hundred weeks following the injury, but that her right was purely personal to herself and expired at her death; and that as there is no provision in the act providing expressly that the dependent children should have a right to a continuance of such compensation for their support, even the minor child, Daniel Bartoni, age fourteen years, and totally dependent in fact, both at the time of the employee's and his mother's death, is not entitled to any continuance or part of the compensation, and that for the same reason none of the other children are so entitled.

The committee rules and finds that the right to compensation which vested in the widow on the death of her husband was that of the sole and conclusively presumed dependent of the employee (Stuart McNicol's Case, 215 Mass. 497), and that this

right vested in her not only during her life (in which case all liability for weekly payments to her or any other person would cease at her death), but that it vested absolutely for a period of three hundred weeks from the date of the injury, so that the unexpired term at the time of her death passed to her administrator as a part of her estate. (United Collieries *v.* Hendry (H. of L.), 2 B. W. C. C. 308; Darlington *v.* Roscoe & Sons, 9 W. C. C. 1; Minton-Senhouse Reports.)

The fact that this decision would perhaps mean that the fund on the death of the widow would be subject to distribution, after first paying her debts, if any, according to the law governing the distribution of estates of deceased persons, is nevertheless more in harmony with the obvious intention of the act, which seeks to provide support for dependents of the employee, than to hold that all liability of the insurer for weekly payments ends with the life of the widow, even if minor dependent children of the employee are still living.

The decision contended for by the insurer would leave in many cases the entire object of the act, so far as the relief of dependents is concerned, entirely defeated. If a widow happened to die within the period of said three hundred weeks, even though there were left a dependent family of minor children of the deceased employee, said children would get nothing under an act which was passed for their relief.

The committee therefore finds that the average weekly wages of the deceased employee were $8.65, by not deducting the time in which the employee did not work on account of bad weather; that the widow of the employee was entitled to a weekly compensation of $4.33 for a period of three hundred weeks from Aug. 26, 1913, the date of the injury; that said right to weekly payments of the widow vested in her at the time of her death; that such weekly compensation as has accrued before her death and since, and as continues through the remainder of the period, passes to the administrator of her estate; and that such administrator is entitled to the payment thereof.

DAVID T. DICKINSON.
JOHN J. CUNNINGHAM.

W. Lloyd Allen dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Tuesday, April 13, 1915, at 11 A.M., and, revising the findings and decision of the committee of arbitration, finds and decides as follows: —

All the material evidence is reported by the committee of arbitration.

The evidence shows that the employee, John Bartoni, earned the sum of $449.75 during the twelve months preceding the date of his injury and death on Aug. 26, 1913, said injury and death arising out of and in the course of his employment. During this period he lost 12.97 weeks, being unable to work because of weather conditions.

The employee left a widow, who lived with him at the time of the injury and who was, therefore, conclusively presumed to be wholly dependent upon him for support. Before any compensation was paid, however, she died, leaving five children, as enumerated in the report of the committee.

Two questions are involved: (1) What were the average weekly wages of the employee at the time of the injury? (2) Did the right to compensation to which the widow became entitled vest in her and pass to her estate upon her demise?

"Average weekly wages," as defined in Part V., section 2, of the statute, "shall mean the earnings of the injured employee during the period of twelve calendar months immediately preceding the date of injury, divided by fifty-two; but if the injured employee lost more than two weeks' time during such period then the earnings for the remainder of such twelve calendar months shall be divided by the number of weeks remaining after the time so lost has been deducted."

This employee lost 12.97 weeks, due, according to the testimony, to the weather conditions. He might have lost the time by reason of a desire to rest, or because of sickness, or for one of a large number of other causes. The fact is, however, that he "lost more than two weeks' time" during the period of twelve months preceding the injury; therefore the divisor of

the sum of money earned by him during such period is not 52, but 52 minus 12.97, which is 39.03, the number of weeks which he actually worked. The quotient is $11.53, which is, therefore, the correct average weekly wages of the employee in accordance with the definition given in the statute. This definition is mandatory, and not permissive; it differs also from the definition given in the English and many other acts, and intends evidently to give an employee compensation based upon the wages paid him when he works a normal week, unaffected by weather, sickness, desire for leisure or other conditions. The right of the widow to compensation under the statute for a period of three hundred weeks from the date of the fatal injury to her husband became a vested interest upon the death of the said widow and passed to her estate. The Board agrees with the ruling and finding of the committee in respect to the compensation being a vested interest, and affirms its decision in this particular.

The Industrial Accident Board finds and decides, upon all the evidence, that the employee, John Bartoni, received a personal injury arising out of and in the course of his employment on Aug. 26, 1913, said personal injury causing his death; that the average weekly wages of the employee were $11.53; that Asonta Bartoni, the widow of the employee, living with him at the time of the injury, was conclusively presumed to be wholly dependent for support upon his earnings, and entitled, therefore, to a weekly payment of $5.765 for a period of three hundred weeks from Aug. 26, 1913; that said right to weekly payments vested in her at the time of her death, and that such weekly compensation as has accrued before her death and since, and as continues through the remainder of the period of three hundred weeks, passes to Joseph Bartoni, administrator of the estate of Asonta Bartoni, as such, and that the said administrator is entitled to the payment thereof.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

Amended Findings and Decision of the Industrial Accident Board on Review.

The insurer having requested an opportunity to discuss further the matter of the average weekly wages of the deceased employee, and the attorney for the administrator of the estate of said deceased employee having agreed thereto, the Industrial Accident Board heard the insurer on Thursday, May 13, 1915, at 11.45 A.M., and finds and decides as follows: —

All the material evidence is reported by the committee of arbitration.

The evidence shows that the employee, John Bartoni, earned the sum of $449.75 during the twelve months preceding the date of his injury and death on Aug. 26, 1913, said injury and death arising out of and in the course of his employment. During this period he lost 12.97 weeks, being unable to work because of weather conditions.

The employee left a widow, who lived with him at the time of the injury and who was, therefore, conclusively presumed to be wholly dependent upon him for support. Before any compensation was paid, however, she died, leaving five children, as enumerated in the report of the committee.

Two questions are involved: (1) What were the average weekly wages of the employee at the time of the injury? (2) Did the right to compensation to which the widow became entitled vest in her and pass to her estate upon her demise?

"Average weekly wages," as defined in Part V., section 2, of the statute, "shall mean the earnings of the injured employee during the period of twelve calendar months immediately preceding the date of injury, divided by fifty-two; but if the injured employee lost more than two weeks' time during such period, then the earnings for the remainder of such twelve calendar months shall be divided by the number of weeks remaining after the time so lost has been deducted."

This employee lost 12.97 weeks, due, according to the testimony, to the weather conditions. He might have lost the time by reason of a desire to rest, or because of sickness, or for one of a large number of other causes. The fact is, however, that he "lost more than two weeks' time" during the period of

twelve months preceding the injury; therefore the divisor of the sum of money earned by him during such period is not 52, but 52 minus 12.97, which is 39.03, the number of weeks which he actually worked. The quotient is $11.53, which is, therefore, the correct average weekly wages of the employee in accordance with the definition given in the statute. This definition is mandatory, and not permissive; it differs also from the definition given in the English and many other acts, and intends evidently to give an employee compensation based upon the wages paid him when he works a normal week, unaffected by weather, sickness, desire for leisure or other conditions. The right of the widow to compensation under the statute for a period of three hundred weeks from the date of the fatal injury to her husband became a vested interest upon the death of the said widow and passed to her estate. The Board agrees with the ruling and finding of the committee in respect to the compensation being a vested interest, and affirms its decision in this particular.

The definition given in the statute, which provides that time lost shall be deducted from the fifty-two weeks as a divisor in order to get the average weekly wage, is the course to follow in cases of continuous employment, as was said by the Supreme Judicial Court in the case of Barney Gillen *v.* Ocean Accident and Guarantee Corporation, Ltd., 215 Mass. 96. The deduction for lost time was not required in the Gillen case because his employment was not continuous.

In the present case the claimant had been in the employment of the single employer, in whose work he was engaged at the time of the injury, for many years, his employment not being broken into brief periods through working for different employers, as in the Gillen case. Hence, in accordance with the intent and direction of the statute, the time lost from the claimant's work for any reason should be deducted from 52 in reaching the divisor to ascertain the weekly average.

In other words, when an employee has worked for over a year for the same employer, and does not by the nature of his employment have to shift from one employer to another to obtain his ordinary earning, the average weekly wage that the statute contemplates as the unit for his remuneration is the average

wage which he gets while actually working, the time when he is not working not to count in determining this unit of remuneration.

The "normal return" to which the court refers in the last paragraph but one in the Gillen case is taken to mean, from the context of the rest of the decision and from the wording of the statute, the normal return which the workman is paid, when he actually works, per week.

The determination of "average weekly wages," in accordance with the definition given in the statute, is important to the employee and his dependents. When a personal injury is received, and incapacity for work or death results, the employee is in fact receiving wages based upon his normal earning capacity, that is, upon the rate per day agreed upon, multiplied by the number of days in a working week. When the employee's ability to earn wages is taken from him he loses the sum which he would have received had he been able to continue at his employment without interruption. His injury does not come at a time when he is idle, either because of a desire for a vacation, idleness caused by reason of weather conditions, or for other reasons; it comes at a time when he is earning full wages.

As the court has said in Daniel Murphy's Case, 218 Mass. 278, "This statute was the beginning of a new kind of legislation and was dealing with a class of cases involving an infinite variety of circumstances. The Legislature may well have thought that it was not wise to attempt at first to provide a specific rule for every possible case, but simply to provide a few general rules easily understood and easy of application, and, as experience dictated, from time to time to make changes." Such changes should come, however, by express legislative enactment.

The Industrial Accident Board finds and decides, upon all the evidence, that the employee, John Bartoni, received a personal injury arising out of and in the course of his employment on Aug. 26, 1913, said personal injury causing his death; that the average weekly wages of the employee were $11.53; that Asonta Bartoni, the widow of the employee, living with him at the time of the injury, was conclusively presumed to be wholly dependent for support upon his earnings, and entitled, therefore,

to a weekly payment of $5.765 for a period of three hundred weeks from Aug. 26, 1913; that said right to weekly payments vested in her at the time of her death, and that such weekly compensation as has accrued before her death and since, and as continues through the remainder of the period of three hundred weeks, passes to Joseph Bartoni, administrator of the estate of Asonta Bartoni, as such, and that the said administrator is entitled to the payment thereof.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

Decree of Supreme Judicial Court on Appeal.

RUGG, C.J. One question presented on this record is the meaning of "average weekly wages" in the Workmen's Compensation Act. The pertinent facts in that connection are that the deceased, who received a mortal injury arising out of and in the course of his employment, was a laborer at the granite works of the subscriber. During the year preceding his injury he had not worked for a period of 12.97 weeks, because the weather did not permit. He worked exclusively for the subscriber, and when he did not work it was because of the weather and for no other reason. Since he was a laborer in granite works, the assumption seems necessary that the inclement weather, which was the cause for his not working for 12.97 weeks, was a cause common to the employment and not peculiar to the employee. His total earnings for the year were $449.76. The governing words are found in St. 1911, c. 751, Part V., § 2: " 'Average weekly wages' shall mean the earnings of the injured employee during the period of twelve calendar months immediately preceding the date of injury, divided by fifty-two; but if the injured employee lost more than two weeks' time during such period, then the earnings for the remainder of such twelve calendar months shall be divided by the number of weeks remaining after the time so lost has been deducted."

This definition is significantly unlike any provision in the English act. It there is provided that "average weekly earnings

shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated." (6 Edward 7, c. 58, Schedule 1, (2), (*a*).) It was pointed out in Gove's Case, 223 Mass. 187, 192 to 194, that the measure of compensation provided by our act is quite different from that established by the English act. Therefore, decisions of the English courts can throw no light upon the point we have to decide. That portion of the sentence in the definition of average weekly wages following that just quoted and relating to continuous work of a specified kind for different employers, was under consideration in Gillen's Case, 215 Mass. 96, but it affords no assistance in deciding the case at bar.

The broad question, then, is the meaning of the words "average weekly wages" in the act as applied to kinds of employment where it is a necessary condition that by reason of inclement weather the employees should lose in each year a substantial aggregate of time. When our Workmen's Compensation Act was adopted it was obvious that the lack of accurate definition of average weekly wages in the English statute had given rise to considerable litigation. The English act was uncertain in this regard. It would have been an invitation to continued actions in the courts to have imparted its words into our act. Doubtless those who framed our act were aware of this embarrassment in the administration of the English act. In establishing a new definition of "average weekly wages" for our act it well may have been intended to obviate many of the difficulties which had been developed by experience under the English act. (See report of Commission on Compensation for Industrial Accidents, 1912, page 53.) The definition (Part V., § 2) in effect means that where a man works regularly for every working day for twelve calendar months preceding his injury, then his total wages received during that time are to be divided by fifty-two weeks, in order to ascertain his average weekly wage. The same rule is followed when no more than two weeks are lost by the employee during that twelve months. Thus wages are averaged for a year for such an employee. But where more than two weeks are lost during the twelve calendar months preceding the injury, then the "average weekly wages" on which the compensation payable under the act is based is

found in a different way. It is ascertained simply by dividing the total amount received as wages during the twelve months by the weeks during which labor actually is rendered. That is not an average weekly wage for a year. It is an arbitrary definition of average weekly wage. In a sense it is an artificial average. But it is the standard established by the act. Whatever apparent confusion there may be in the definition arises from a preconception that the period over which the wages are to be divided must be the same in all cases in order to obtain an average. But that is not the theory of the definition. Whatever criticism may be made of the definition as thus interpreted, it at least has the merit of simplicity. It is explicit and readily understood. It is applicable to numerous craftsmen who are liable to lose much time during any period of twelve calendar months because of bad weather. It may have been thought by the Legislature that in case of injury to them the compensation payable under the act should be based on the wages which they receive when actually at work, rather than upon what would be a weekly average of their wages spread over the whole year, including the days when they do not work as well as the days when they do work.

It has been argued that the words "time so lost" in the definition do not describe time during which one does not work because of bad weather. Whether that argument is sound depends upon the significance of the word "lost." Ordinarily, when that word is used in connection with the time of one who works, it means the time when one might have worked but was prevented. It often is employed to express the effect of weather. It is common speech to say of the carpenter, the mason, and others engaged in outdoor employment, that they have lost time because of rain, snow or cold. One is said to lose the pleasure of a journey because of rain, to lose the benefit of a vacation by reason of rough weather, to lose the grandeur of an extended mountain prospect because of mist, and to lose an opportunity because of a delayed train. This sense of the word "lost" is in accordance with a "common and approved usage of the language," the rule established by R. L., c. 8, § 4, Third, for the construction of words in statutes. It would be too narrow a definition to confine its scope to cases where the la-

borer might have worked but for some reason operating on himself alone and not affecting others in the same grade of employment. The plain and natural signification of the controlling words of the act covers such a case as the present. It would require some refinement so to construe it as to exclude one who was deprived of work solely because of weather from the general classification of those who have lost more than two weeks' time in twelve months. As was said by Hammond, J., in Murphy's Case, 218 Mass. 278, it was the purpose of the Legislature by this act "to provide a few general rules, easily understood and easy of application." It is consonant with such purpose to interpret the act to include among those who have lost more than two weeks' time during the year persons who have been prevented from working by inclement weather. The Board ruled rightly that, since the deceased employee lost more than two weeks' time in the year preceding his injury, the total amount received by him as wages during the year was to be divided by the actual number of weeks during which he worked, in order to find his average weekly wage.

The right to the weekly award was not vested absolutely in the widow, but continued only during her life. The right to compensation on her account ceased with her death. (Murphy's Case, 224 Mass. 592.)

The administrator of the widow of the deceased employee is entitled to the weekly payment provided, by Part II., section 6 of the act, "from the date of the injury" until the time of the decease of the widow. In this connection it is of no consequence that the widow deceased before payment was made to her. No compensation had been paid to her because of pending negotiations as to settlement for a lump sum. She was herself conclusively presumed to be dependent upon the employee and the obligation rested strongly on her to support their minor children. (Coakley's Case, 216 Mass. 71, 74.)

The deceased employee left as his family a widow, now deceased, and five children, four of whom were over twenty-one years of age and one of whom was fourteen years old. The brothers and sisters of this minor child have agreed to release to him whatever rights they may have to compensation. The minor child comes within the definition of "dependents" given

in Part V., section 2 of the act, because he was a member of the employee's family as well as one of his next of kin. (Cowden's Case, 225 Mass. 66.) By Part II., section 7 (*c*) he would be conclusively presumed to have been wholly dependent upon his father, the deceased employee, except that his mother survived and was conclusively presumed to be dependent. It is provided by Part III., section 12, as amended by St. 1914, c. 708, § 11, that "any weekly payment under the act may be reviewed by the board, and on such review the board may, in accordance with the evidence and subject to the provisions of this act, issue any order which it deems advisable." This section occurs in the part of the act which is devoted to "Procedure." This section in the original act, before the amendment, expressed in a crude way, in connection with other parts of the act (see Part V., § 2), the idea that the Board might adopt the relief afforded by the act to changed circumstances like those here disclosed. The amendment, which was part of an act embodying many perfecting provisions, made clear in this respect what was before somewhat obscure. Even though the injury in the case at bar occurred before the enactment of the amendment, the liability of the insurer is not enlarged. (See Hanscom *v.* Malden & Melrose Gas Light Co., 219 Mass. 111.) Moreover, this section is broad in its scope. It should be given a construction commensurate with its obvious purpose. It would be "subject to the provisions of" the Workmen's Compensation Act to order the payment of weekly compensation to be made to a minor child of the deceased employee actually dependent upon his father for support at the time of the latter's decease, after the decease of his widowed mother. The case at bar is the typical one referred to by way of illustration in Murphy's Case, 224 Mass. 502. What was there said by way of argument is now adopted as the ground of decision.

The decree must be reversed and the case remanded to the Industrial Accident Board, where a motion may be made for further hearing and the exercise of the supervisory power of the Board under Part III., section 12, as amended by St. 1914, c. 708, § 11.

So ordered.

CASE No. 1629.

ELIZA S. HUMPHREY, *Employee.*
HUMPHREY BROTHERS, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

EMPLOYEE DEFINED. CLAIMANT EMPLOYED BY HUSBAND. HUSBAND WAS A SUBSCRIBER TO INSURANCE UNDER THE ACT. WIFE WAS BOOKKEEPER AND CASHIER. IT WAS HER CUSTOM TO TAKE HOME CERTAIN CASH AND ACCOUNT BOOKS FOR THE PURPOSE OF COMPLETING HER WORK. WHILE SO ENGAGED SHE SLIPPED AND FELL ON THE SUBSCRIBER'S PREMISES. COMPENSATION AWARDED.

The claimant, the wife of the subscriber, was employed as a cashier and bookkeeper by him. She had worked originally for a co-partnership, consisting of her husband and his brother, under the firm name of Humphrey Brothers. When the partnership was dissolved she continued to work for her husband in the same capacity. It was her custom to carry home certain cash and account books for the purpose of completing her work. While taking these books home, after the day's business, she slipped on the ice and fell on the premises of the subscriber.

Held, that the claimant was an employee under the act.

Review before the Industrial Accident Board.

Decision. — Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Appealed to Supreme Judicial Court.

Decision. — Appeal dismissed.

Report of the Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Eliza S. Humphrey *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1629 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, W. Lloyd Allen, representing the insurer, and Charles S. Ensign, Jr., representing the employee, heard the parties and their witnesses in the Selectmen's Room of the Town Hall, Hingham, Mass., on Friday, March 19, 1915, at 12 M., and in the rooms of the Industrial Accident Board on Friday, April 9, 1915, at 2 P.M.

John M. Morrison appeared as counsel for the insurer, and Arthur V. Harper appeared for the employee.

On Tuesday evening, Dec. 29, 1914, Eliza S. Humphrey, the injured employee, fell on the icy walk outside of the store premises of Humphrey Brothers, which business was conducted solely by her husband at the time. She sustained a fork fracture of the right arm. At the time of the injury she was receiving a weekly wage of $12. Humphrey Brothers were insured under the provisions of the act with the Employers' Liability Assurance Corporation, Ltd.

Eliza S. Humphrey, the injured employee, testified that about a year before the injury she was an employee of a partnership, consisting of her husband and his brother. About this time her husband purchased the property and business of the firm, and the claimant thereafter continued to work as before, in the same position, and at the same rate of wages. Her husband continued to conduct the business as proprietor, — the same as before, — and still continued to do so. In the course of her duties she had charge of the cash, and sorted it out for the current use of the business by the different employees. It was her practice in the evening to carry the books and cash from the store to her home. There she made entries of the day's business upon the books, and kept the cash in her house, where it was supposed to be safer than in the store, on account of a recent burglary in the latter place. On Tuesday evening, Dec. 29, 1914, at about 9 o'clock, while going to her house as usual, and carrying the store books, as well as some cash in a bag, both of them in her two hands which she held fast together and against her body, she slipped on some smooth ice which had frozen and coated the ground, the same as it was frozen and coated everywhere about the neighborhood. She broke her right wrist in the fall. The place on the premises where she fell, she testified, was on a lot of land on which the grocery store was situated, before she reached the adjoining lot on which her home stood. In addition to the building used as a store there was also a dwelling house upon the store lot, and this dwelling house had previously been owned by the two brothers jointly, as a firm, and was purchased by her husband when he bought out the business and property of the firm. It

was near this dwelling house that the claimant fell, and it was in the usual path where she traveled at night in going to her home on the adjoining lot, at which times she was in the practice of carrying the books and cash for the purposes heretofore explained, as on the evening of the accident. She thought that she would not have been so apt to fall if she did not have to hold the books and bag of cash up close to her body, as when she was slipping she could not put up her hands. By reason of the fall she was totally incapacitated for work until March 9, 1915, when she returned at half pay, $6 a week, her daughter and husband assisting her about her store duties.

Dr. John A. Peterson, who attended Mrs. Humphrey, testified that he was called to see her the 29th of December, 1914, the evening of the injury, to treat her for a Colles fracture of the right arm, which is a fracture common to persons who pitch forward and throw the full weight of the fall on the injured member. She had a good deal of shock, and there was much inflammation and swelling through her arm and wrist. It required dressing every day, with the exception of one, until the 15th of January, 1915, and from then on about once every four or five days. His charge for setting the fracture and dislocation was $25, $36 for calls and dressings, and $5 for an X-ray, which was taken on the 30th, the day after the injury. On either February 2 or February 7 he removed the splints from her arm, and on February 14 saw her for the last time; her arm was evidently much improved at that time, but not in a condition which would warrant her return to her customary work of writing and lifting the books.

It was agreed by both counsel that neither Mr. Humphrey, the claimant's husband, nor his daughter should testify, as both would corroborate the testimony of Mrs. Humphrey.

The committee finds, on the weight of the evidence, that the claimant, on Dec. 29, 1914, received an injury arising out of and in the course of her employment. Her average weekly wages were $12, and her work was that of a cashier and bookkeeper. While she was carrying certain cash and account books from the store to her home, after the day's business, she slipped on some ice which had become frozen in the path, and fell to the ground, breaking her right wrist. It was part of her

work and duty as cashier and bookkeeper to take this money to her home for safe keeping; it was also her practice to finish her book entries of the day's business at her home, rather than remain in the store at night to do the work, and she was taking said account books home with her for this purpose at the time of the accident. The committee finds that the business was formerly owned and conducted as a partnership, consisting of her husband and his brother, under the firm name of Humphrey Brothers. She had originally worked for this firm in the position of cashier and bookkeeper, and had been paid regular wages therefor, and continued to do so after her husband purchased the business of his brother, becoming, at that time, sole owner. The firm name of Humphrey Brothers was still continued at the time of the injury, although A. H. Humphrey, the claimant's husband, was then sole owner. The wages she received were entered upon the books of the business when conducted by the firm, and later by her husband. The time when she fell was about 9 o'clock at night; the place was on the lot of land on which the store rested, and at a point in the path which she usually took in going to her home, which was occupied by herself and her husband, and was on the lot immediately adjoining. It was dark at the time of the accident, and her husband was walking directly behind her with a lighted lantern. By reason of the darkness and her position in carrying the cash and books in front of her, in both hands, she was exposed to somewhat more danger from falling than otherwise. The ice was slippery, and general and common to the neighborhood, and natural to that season. The claimant was the cashier and bookkeeper when the firm, and later her husband, became the subscriber.

The case of Sheldon *v.* Needham, VII. B. W. C. C., 471, Part III., 1914, Quarterly Advance Sheets, in which compensation was denied to the house servant who slipped on a banana peel on the sidewalk while going on an errand, does not apply, inasmuch as the accident occurred on the public highway and not on the premises of her employer, and the employee was exposed only to the same risk as other passersby on the public street; whereas in the case at bar the claimant fell on the lot of land occupied and used in connection with the store and

business in which she worked, and the articles she was carrying, the time of night and the place increased the hazard of her falling.

The committee rules and finds that she was an employee within the meaning and intent of the compensation act, her employment originating with the partnership and continuing, for the purposes of the act, afterwards. The fact that there was no legal contract of hire on which she could proceed against her husband for wages by reason of her marriage status is immaterial. This is not a common-law proceeding against her husband on such a contract. Furthermore, her contract of hire with the partnership was valid and enforceable at the time the firm became a subscriber. Her services were not gratuitous, and the parties, including the insurer, expected that the wages would be paid. The insurer was liable to compensation for injuries to the firm's employees, including the claimant, and should be estopped from setting up this defense against the claimant while purporting to continue the insurance. This act should be so construed, in harmony with its purpose to give equitable rights and remedies, as not to permit this defense.

The committee therefore finds that the claimant is entitled to a weekly compensation of $6, one-half of her average weekly wages, on account of total incapacity for work, from Jan. 13, 1915, the fifteenth day after the injury, to March 9, 1915, a period of seven and six-sevenths weeks, amounting to $47.14; and to partial compensation at $3 a week, one-half the difference between her old rate of wages and the new, from said March 9, 1915, when total incapacity ceased, to April 9, 1915, the date of the second hearing, when all incapacity as a result of said injury had ceased, a period of four and three-sevenths weeks, amounting to $13.49, aggregating a total of $60.63; and that she is also entitled to $43 for medical services during the first two weeks after the injury.

DAVID T. DICKINSON.
CHARLES S. ENSIGN, Jr.

W. Lloyd Allen dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, Dec. 16, 1915, at 11.30 A.M., and affirm and adopt the findings and decision of the committee of arbitration.

Appearances: John M. Morrison for the insurer, Arthur V. Harper for the employee.

The accompanying plan, prepared by Mr. Russell H. Whiting, dated May 9, 1916, and the evidence reported by the committee of arbitration comprise all the material testimony in the case.

In explanation of the plan it may be stated that the place on the plan marked "6-in. step", connected with the building No. 139, is the place of the injury, and is located on the premises owned by Humphrey Brothers, which was the legal business name at the time of the injury to the claimant. The building, No. 141, and the land incidental thereto were owned by the claimant, Eliza S. Humphrey, and she was proceeding to this building where her home was located on the evening of the injury, carrying the cash and business book of the store, when she slipped and received her injury.

The evidence warrants the finding by the committee that the claimant was an employee within the meaning of the Workmen's Compensation Act; that she received a personal injury which arose out of and in the course of her employment; that she was totally and partially incapacitated for work as a result of said personal injury, as found by the committee, and entitled to compensation as set forth in the report, amounting in all to $103.63.

DAVID T. DICKINSON.
DUDLEY M. HOLMAN.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

Decree of the Supreme Judicial Court on Appeal.

RUGG, C.J. There was a final decree entered in the Superior Court. An appeal could be taken under the law only within twenty days from the date of entry of the decree. (St. 1911, c. 284, § 1.) The appeal actually was taken twenty-three days thereafter. The endorsement is, "Filed and allowed by consent." Appeal from a final decree is matter of right, and does not depend upon the allowance or discretion of the judge. It was said by Chief Justice Gray, "The time for claiming an appeal cannot be extended by consent of parties or by the justice whose decree is appealed from. . . . If an appeal is not taken within the time prescribed, the full court cannot acquire jurisdiction thereof, otherwise than upon petition for leave to appeal according to the statute." (Attorney General *v.* Barbour, 121 Mass. 568, 573.) That petition must be made directly to the full court within one year after the entry of the decree from which an appeal is desired. (R. L. c. 159, § 28.) The correctness of this statement of the law is not open to doubt. There is nothing in Boston & Albany Railroad *v.* Commonwealth, 157 Mass. 68, which justifies this court in assuming a jurisdiction which it does not possess under the law. A court which is without jurisdiction over a case cannot decide it authoritatively and as a court. (See Weil *v.* Boston Elevated Ry. Co., 216 Mass. 545, 546, 547.) Since the procedure under the Workmen's Compensation Act is according to equity (Gould's Case, 215 Mass. 480) the appeal was not seasonably claimed.

Exceptions were taken to the refusal to grant a motion to dismiss the appeal because not seasonably entered in the full court after being claimed. (Griffin *v.* Griffin, 222 Mass. 218.) These exceptions must be dismissed because no appeal had been taken. Hence there was nothing before the court.

Appeal dismissed.
Exceptions dismissed.

CASE NO. 1632.

BENJAMIN N. DIONNE, *Employee.*
FRED T. LEY & CO., *Employer.*
ÆTNA LIFE INSURANCE COMPANY, *Insurer.*

ARISING OUT OF EMPLOYMENT. TUBERCULOSIS. COLD CONTRACTED WHILE RIDING TO WORK IN EMPLOYER'S AUTO. NO CAUSAL CONNECTION.

The employee claimed to have contracted a cold while riding to work in employer's auto on April 12, 1914, and to have suffered from exposure during his work on that day. He worked steadily up to Nov. 30, 1914, when he quit work, suffering from tuberculosis. There was evidence that he had had a cough all the previous winter.

Held, that his employment neither produced the disease nor accelerated its progress.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Benjamin N. Dionne *v.* Ætna Life Insurance Company, this being case No. 1632 on the files of the Industrial Accident Board, reports as follows: —

The arbitration committee, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, Asa S. Allen, representing the insurer, and Francis X. Quigley, representing the employee, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, New Albion Building, Boston, Mass., Saturday, April 10, 1915, at 9.30 A.M.

William H. Vincent appeared as counsel for the insurer, and Simon E. Duffin appeared for the employee.

The employee claimed that while riding to work on Sunday, April 12, 1914, in an auto furnished by his employer to carry the employees to their job, he contracted a cold which developed into pulmonary tuberculosis, which has incapacitated him for work since Nov. 30, 1914.

The material evidence was as follows: —

On Saturday, April 11, Dionne was told by his foreman that his services would be required the following day on a "cut

over" job for the Edison Electric Illuminating Company in East Boston, and was told that if he would be in front of his house at 5 A.M. the auto of his employers would be along and pick him up. Dionne waited outside his house until 5.30, when the auto came along, picked him up and carried him to East Boston, a ride consuming fifteen minutes' time. There were several other men in the auto, and he was obliged to stand in the doorway during the ride. He worked climbing poles until 3 o'clock in the afternoon, when there was a let-up until 7 o'clock. He was on the poles between 7 and 8, and quit work at 8.30 P.M. The men quit work at 8.30, and, although the auto was not provided to take them home, Dionne and several others climbed in and rode. It was a clear, seasonable day, and the mean temperature was 2 degrees above normal for April 12. A gale sprang up in the afternoon, which at 7.25 P.M. had reached its maximum velocity of 47 miles an hour. When Dionne reached home he told his wife he was chilled through, and, according to his wife, quit work on the following Thursday and came home with a cough and cold. She said he had been coughing ever since, although this part of a day was the only time he lost up to November 30, when he quit work. He was under the care of his own physician for two weeks, and on December 14 went to the Boston Consumptives' Hospital at Mattapan. Dionne claimed, and his wife corroborated his testimony, that he never had had a cough before April 12. His foreman testified, however, that he was subject to coughing spells all the previous winter. A fellow employee, who had worked with him off and on for four years, testified that he always had had a cough. A brother-in-law of Dionne testified that he had known him for twelve years, and that he always had been hale and hearty up to last September, when he began to fail. It was at this time that the brother-in-law first noticed any cough.

Dr. Robert E. S. Kelley, acting resident physician at the Mattapan hospital, read the hospital record of Dionne's case, which showed that he was admitted on Dec. 14, 1914, and discharged as unimproved on Jan. 31, 1915. On admission he gave no history of tuberculosis in his family, and stated that he had first noticed his cough in the March previous. He had a

far advanced and unfavorable case of tuberculosis. In giving his history at the hospital no mention was made of the alleged chill or exposure on April 12. Dr. Kelley testified that in his opinion climatic conditions on April 12 did not have any effect on Dionne's disease; neither did the chill. Bodily fatigue brought on by his long day's work, and the exposure during that time, would not produce tuberculosis, but it was possible that it so lowered his resistance that it gave the previous focus of the disease a chance to open up and spread itself. This was possible rather than probable.

Dr. Harry H. Hartung, the insurer's physician, testified that it was difficult to state positively that one exposure would cause tuberculosis. The disease progresses by slow stages, and it generally takes from twelve to eighteen months to reach the advanced stage. Under the conditions in this case he would expect pneumonia or some other acute process in twenty-four or forty-eight hours, and not tuberculosis ten months later without any acute process preceding it.

The committee of arbitration finds, upon consideration of all the evidence, that there was no causal connection between the claimant's employment with Fred T. Ley & Co. on April 12, 1914, or at any other time, and the disease from which he is suffering; that his employment neither produced the disease nor accelerated its progress; and that, therefore, he is not entitled to compensation under the act.

FRANK J. DONAHUE.
ASA S. ALLEN.
FRANCIS X. QUIGLEY.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, June 24, 1915, at 10 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by

the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows and the Board finds that there was no causal connection between the conditions under which the employee was obliged to perform his work on April 12, 1914, and the development of tuberculosis to the point that it incapacitated him on Nov. 30, 1914; that his employment neither produced the disease nor accelerated its progress; and that, therefore, no compensation is due him under the statute.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1640.

JOHN HUTCHESON, *Employee.*
E. S. MORSE & CO., *Employer.*
FRANKFORT GENERAL INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. CONTRACT OF EMPLOYMENT. CLAIMANT ASSISTS IN TYING ROPE ABOUT POST ON WHARF. PERFORMS THIS SERVICE AT REQUEST OF MAN ON BOARD BOAT. NO CONTRACT OF HIRE BETWEEN SUBSCRIBER AND CLAIMANT.

The employee stated that his regular work was that of a coal trimmer, and that, at the time of the injury, the time had not arrived for him to begin work or to get a job to trim coal. While waiting on the wharf a man on board the vessel which was tied to the dock spoke to him telling him to take hold of a rope. He took the rope as requested, and while he was tying it around a post at the end of the wharf the side of the boat drifted in against his left hand, severely crushing it. He stated that the practice in hiring him when he worked as a coal trimmer was for the superintendent to hire and direct him to go to work when the work was ready. He had not been hired or directed to work by the superintendent on the day of the injury.

Held, that the claimant was not entitled to compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John Hutcheson *v.*

Frankfort General Insurance Company, this being case No. 1640 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Arthur T. Good, representing the employee, and James O. Porter, representing the insurer, after being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Friday, March 26, 1915, at 10 A.M.

H. R. Bygrave appeared as counsel for insurer, and Thomas Kelly as counsel for employee.

The sole question in this case was whether an injury which the employee sustained to his left hand on Oct. 9, 1914, was received in the course of and arising out of an employment relation with the above-named employer, E. S. Morse & Co.

The employee testified as follows: —

That the boat was tied to the dock, and a man spoke to him telling him to take hold of the rope, which he did, and while he was tying it around a post at the end of the wharf the side of the boat drifted in against his left hand severely crushing same. He testified that his regular work was that of a coal trimmer, which was to finish the emptying and cleaning out of the coal after the first and principal work of discharging the coal had been completed, and that the time had not arrived for him to begin work or to get a job to trim the coal from the vessel; that no one had yet hired him to do such work on the vessel; that the practice in hiring him when he got such jobs as this at trimming was for Mr. Hughes, who was the superintendent, to hire and direct him to go to work when the work was ready and when he was needed, and that he had not been hired or directed to work that day on board this vessel by said Mr. Hughes.

The committee finds that the claimant was not an employee of the said E. S. Morse & Co. at the time of the injury, and there was no contract of hire between them, and he was not working under any such contract of hire when he received the injury; that when he was hurt he was accommodating one of the men on board of the vessel who had asked him to pull on the line and tie the ship. The person who made this request

of him was not in the employ of the said E. S. Morse & Co. for whom the claimant was in the habit of working at coal trimming. The insurer is, therefore, not liable to the claimant for compensation by reason of the injury.

DAVID T. DICKINSON.
ARTHUR T. GOOD.
JAMES O. PORTER.

CASE NO. 1644.

PATRICK O'CONNELL, *Employee.*
DENNIS F. CROWLEY, *Employer.*
ROYAL INDEMNITY COMPANY, *Insurer.*

INDEPENDENT CONTRACTOR. EMPLOYEE DEFINED. WHETHER CLAIMANT WAS AN EMPLOYEE OR INDEPENDENT CONTRACTOR IS A QUESTION OF FACT. CLAIMANT'S INJURY RESULTED FROM COMPLIANCE WITH ORDERS OF SUBSCRIBER, AND BY REASON OF CONDITION OF SPECIAL ROADWAY CONSTRUCTED BY SAID SUBSCRIBER FOR USE OF EMPLOYEES IN DELIVERING STONE. INJURY HAD NO RELATION TO CONTROL, MANAGEMENT AND CARE OF HORSE WHICH CLAIMANT WAS DRIVING. COMPENSATION AWARDED.

The claimant owned two teams, one of which he drove himself; the other was driven by a man whom he employed. He hired only one man and had no other driver in his employ. Both teams were hired out to the subscriber at the rate of $5 a day for each team and man. The subscriber had teams of his own and also hired teams from other people. He had a contract to do riprapping on the banks of the Connecticut River in the town of Hadley, and had constructed a roadway on the river bank for the purpose of permitting the delivery of stone obtained at the city stone crusher. The claimant was required to deliver a certain number of loads of stone each day, and he and all the other teamsters were under the direct control and supervision of the subscriber, or of a person exercising powers of superintendence in his behalf. The claimant's injury resulted from his compliance with the orders of his master, and had no relation to the control, management and care of the horse which he was driving at the time. While proceeding down the special roadway, in accordance with orders, the claimant's sleigh tipped over. A part of the load and the vehicle came down upon him.

Held, that the claimant was an employee under the Workmen's Compensation Act.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Patrick O'Connell *v.* Royal Indemnity Company, this being case No. 1644 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Robert T. Lee, representing the employee, and Walter L. Stevens, representing the insurer, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Northampton, Mass., on Wednesday, March 24, 1915, at 10 A.M.

Daniel D. O'Brien appeared as counsel for the employee, and A. H. Stetson appeared as counsel for the insurer.

Patrick O'Connell was employed by Dennis F. Crowley, contractor and builder, on the 23d of November, 1914, when he met with an injury which totally incapacitated him, and from which, according to the medical testimony, he had not recovered so as to be able to work on the date of the hearing, Wednesday, March 24, 1915. The contention of the insurer was that O'Connell was an independent contractor.

It appeared in evidence that O'Connell owned two teams, one of which he drove himself; the other was driven by a man whom he employed. He hired only one man and had no other driver in his employ. He hired out both teams to Mr. Crowley at the rate of $5 a day for each team and man. It also appeared in evidence that Crowley had teams of his own and that he also hired other teams from other people; that Crowley had a contract to do riprapping on the bank of the Connecticut River in the town of Hadley; that Crowley had built a road down the bank in order that the teams could deliver the stones at the proper place. He got his stones at the stone crusher of the city of Northampton.

Patrick O'Connell testified that Mr. Crowley used to be at the river bank and gave him orders and told him where to throw off his load of stones. When Mr. Crowley was not there in person he left some one in charge who issued the directions. Mr. Crowley's brother was at the stone crusher, and he saw

that the teams were loaded and the stones weighed. A certain number of loads of stone was required as a day's work. On the afternoon of the 23d O'Connell had arrived at the river bank and thrown off a part of his load at the top of the bank, and with the rest of the load started down the slope to take the remainder down to the bank. On this temporary roadway, which had been constructed by Mr. Crowley, there was a slope, and one runner of the sled was much lower than the other, owing to the construction of the road. Going down the slope the sleigh tipped over and a part of the load and the sleigh came over on O'Connell. He was taken home and Dr. Thomas M. Henney was called to take care of him. His left wrist was sprained; his right ankle was sprained and the leg between the knee and the ankle injured; his right shoulder was injured and his body was bruised. The wrist was well in about six weeks, the ankle in about six weeks and the body bruises healed up. The right shoulder is not healed. Mr. O'Connell cannot drive, lift or do trucking. He testified that he never gave any orders to Mr. Cayo, who drove his other team. Cayo got his orders as O'Connell did. After O'Connell was injured he had no other driver to put on the team, and Crowley put a driver on the team.

It was agreed that his average weekly wages were $14.

Mr. O'Connell testified, on cross-examination, that he had lived in Northampton twenty-five years, first as a laborer, then, having accumulated a little money, he bought some teams and did trucking and general work. He always drove one team himself. In his arrangement with Mr. Crowley he did not agree to do any specific part of the work, and he was not hired for any definite time. There was a day and a half when his teams did not work on account of stormy weather, but none of the other teams worked during that period. He could have been discharged at any time. He received the money for his other team and man and paid his man.

Herbert Cayo testified that he drove a team and that Mr. O'Connell never directed him how to load his team or what to do, nor gave him any orders nor told him what road to take; that he got his orders from Mr. Crowley's brother at the stone crusher, and from Mr. Crowley when he was there; at the river

bank, when he was not there, his help told him what to do. He saw O'Connell when his team was tipped over, and Mr. Riley assisted him in getting him out and taking him home. He had driven down that road and saw other teams. Mr. O'Connell never directed him at the crusher or anywhere else. He had to load just what they said and when they said.

Dr. Thomas M. Henney testified to attending to O'Connell. He said he was bruised all over the body; his right leg was bruised, there was laceration and some swelling, the muscles and tendons of the leg seemed to be torn; there was a bad sprain of the left wrist; the right shoulder was bruised and painful. In three or four days there developed at this laceration an infection — blood poisoning — which continued for about eight or nine days. The wrist bothered him for a month or more. The shoulder still bothers him — the muscles are stiff. He cannot do his usual work — both the shoulder and the leg keep him from work. He cannot shovel, lift, nor is it safe for him to drive a team of horses. He examined him yesterday (the day before the hearing). During the first two weeks he saw him twenty-three or twenty-four times. His blood poisoning was most bothersome. He does not consider that O'Connell is disabled for an unusual length of time. In the condition in which O'Connell is now he is not capable of doing heavy work — manual work. He is not able to step into a wagon. He does not believe he could have done it before this time.

Dr. Sidney A. Clark, called by the insurer, testified that he had known O'Connell for twenty years. He examined him and found a scar 4 or 5 inches above the right ankle, and the right ankle was enlarged. This was the only objective symptom. He said it hurt to raise the arm. The ankle was not stiff — he could move it, but it gave him pain. He is surely able to do manual labor. He cannot see why he could not have worked some time ago. He should have done more to limber up his muscles.

Dennis F. Crowley testified that about the 26th or 27th of October he hired O'Connell at $5 a day for man and team. He gave him a check on November 14 for $135, one on November 18 for $50 and one on November 28 for $169.30. The last check included pay for the board of some of his men. Crowley

also hired teams from Gleason Brothers, — from one to five teams. When the teams went on the job some one had to tell them what to do.

We find, therefore, that O'Connell is entitled to recover compensation; that there was no contract to do a certain specified job or piece of work in a particular way for a stipulated sum. He was employed to perform a service for a reasonable compensation. Crowley retained the power of controlling the work. They did direct the time of doing that work, the number of loads to be carried and the amounts to be carried on each load. The relation of master and servant existed between the two. O'Connell differed in no way from Crowley's own drivers. No more discretion or liberty was allowed him than was allowed them. They went to the same place to receive their load and took their instructions from the agent of Mr. Crowley at the stone crusher. The stone was weighed under the supervision of Mr. Crowley's agent. On arriving at the place where the stone was to be left Mr. Crowley himself, or some one appointed by him, directed their movements. Mr. O'Connell was under the direct charge and management of the same foreman as Mr. Crowley's own drivers. He was in the service of Mr. Crowley, doing the work of Mr. Crowley, of which work he had no control and in the result of which he had no further interest than to receive the stipulated or reasonable rate of wages as for a personal service. He was engaged in the business or employment of Mr. Crowley. In order to carry out his agreement with Mr. Crowley it was necessary for him to drive his own team. He had no other driver that he could substitute for himself, and when he was injured Mr. Crowley had to furnish a driver for his team. He was subject to Mr. Crowley's order, control and direction, in the same way that Mr. Crowley's own drivers were subject to his order, control and direction. He was liable to discharge at any moment, and we find that he was an employee under the act and is entitled to recover.

We further find, on the weight of the medical evidence, that he was at the date of the hearing totally incapacitated for doing the work which he has been accustomed to do. We find that he is entitled to recover compensation based upon two-thirds his average weekly wages, that is, $9.33 a week, be-

ginning with Dec. 7, 1914, the fifteenth day after the injury, up to and including March 24, 1915, the date of the hearing, a period of fifteen and three-sevenths weeks, amounting to $143.95, and continuing during the period of total incapacity. He is also entitled to be paid for his medical attendance during the first fourteen days after the injury, counting the day of the injury as the first day.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

DUDLEY M. HOLMAN.
ROBERT T. LEE.
WALTER L. STEVENS.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, May 13, 1915, at 2.30 P.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows that the employee, Patrick O'Connell, owned two teams, one of which he drove himself, and the other of which he engaged a teamster to drive, receiving from the subscriber, Dennis F. Crowley, $5 per day for each team, including the services of the driver. O'Connell did not own any other teams except the two which are herein referred to. Crowley, the subscriber, had teams of his own, and also engaged teams, with drivers, from others, for the purpose of fulfilling his contract to do riprapping on the bank of the Connecticut River in the town of Hadley. He had constructed a

roadway upon the river bank for the purpose of permitting the delivery of stone obtained at the city stone crusher in Northampton at the required place. The employee, O'Connell, was required to deliver a certain number of loads of stone each day, and he and all the other teamsters were under the direct control and direction of the subscriber, Dennis F. Crowley, or of a person exercising powers of superintendence in his behalf. The subscriber, or his superintendent, directed O'Connell and the other teamster furnished by him what to do, and the manner in which the work should be done. All orders were received from the subscriber and were executed by the employee.

On the afternoon of Nov. 23, 1914, the day upon which the personal injury was received, O'Connell had arrived at the river bank and had thrown off a part of his load at the top of the bank, and had proceeded to take the remainder of the stone down a temporary roadway to another place on the bank. This roadway had been constructed by the subscriber for the purpose of expediting the work of delivering the stone, and sloped to such an extent that one runner of the wagon was much lower than the other, because of the peculiar construction of the road. While proceeding down the roadway, in accordance with orders, the sleigh tipped over and a part of the load and the vehicle came over on the employee. O'Connell was seriously injured and was incapacitated for work, the incapacity continuing at the time of the hearing. Immediately after the injury Crowley, the subscriber, took control of the team, placed a man thereon as teamster, and continued to use the team and man in the work of delivering stone at the river bank. O'Connell was not hired for any specific period, and could have been discharged at any time by his employer.

Upon all the evidence the Board is required to determine the question of fact as to whether or not the claimant, O'Connell, was an independent contractor or an employee at the time of the injury.

The general principles of law which govern cases of this kind have been considered frequently and are well settled. (See Kimball *v.* Cushman, 103 Mass. 194; Preston *v.* Knight, 120 Mass. 5; Driscoll *v.* Towle, 181 Mass. 416; Oulighan *v.* Butler, 189 Mass. 287; Huff *v.* Ford, 126 Mass. 24; Reagan *v.* Casey,

160 Mass. 374; Bonin *v.* Ballard, 196 Mass. 524, 527; Cain *v.* Hugh Nawn Construction Co., 202 Mass. 237; Shepard *v.* Jacobs, 204 Mass. 110; Hussey *v.* Franey, 205 Mass. 413; Tornroos *v.* R. H. White Co., 107 N. E. 1016; Pigeon's Case, 216 Mass. 51; Christiansen *v.* McLellan, 133 Pac. 434, 435.) The implication in such cases is that as to the particulars of the management of the horses the driver is the servant of his general employer, in whose interests and as whose representative he will manage and direct, within reasonable limits, such matters as pertain to the health and safety of the horses and the safety of the vehicle. In these particulars, for the preservation of his property, it will be presumed that the owner of the team retains in his driver a right of control. (Delory *v.* Blodgett, 185 Mass. 126, 129.) But this presumption may be overcome, and the question whether the driver is the servant of the owner of the team or of the person to whom he is lent is one of fact for the jury. (Preston *v.* Knight, 120 Mass. 5, 8.) And he may be the servant of the owner of the team in some particulars and of the person to whom he is loaned in others. (Delory *v.* Blodgett, 185 Mass. 126, 129.) The test is not merely whether the relation of the master and servant exists with reference to the general business which the act is intended to promote, but whether it exists in the particular business which calls for the act, in the smallest subdivision that can be made of the business in reference to control and proprietorship. (Shepard *v.* Jacobs, 204 Mass. 110, 112.) One who has an independent business and serves only in the capacity of contractor may abandon that character for a time and become a mere servant or agent, and this, too, without doing work of a different nature to which he is accustomed, . . . and he may even be a contractor as to part of his service and a servant as to part. (Shearman & Redfield Neg. (6th Ed.), § 165.) Where an independent contractor had finished a building it was held that in throwing waste material from the roof he was acting as a servant of the owner. (Swart *v.* Justh, 24 App. D. C. 596; *in re* Powley, *in re* Vivian & Co., Inc., *in re* Travelers Insurance Co., 154 N. Y. Supp. 426.)

O'Connell's injury resulted from his compliance with the orders of his master, the subscriber, and by reason of the con-

dition of the special roadway constructed by said subscriber for the use of his employees in delivering stone to the river bank, said condition having no relation to the control, management and care of the horse which the employee was driving at the time of the injury, and such injury not being occasioned by any negligent act of the employee while exercising such control, management and care.

The Industrial Accident Board therefore affirms the award of the committee of arbitration providing for the payment by the insurer to the employee of the sum of $143.95 to March 24, 1915, and orders the continuance of the weekly compensation of $9.33 until the total incapacity status of the employee as a result of the injury becomes partial, or ceases completely, the payments continuing or ceasing as provided by the statute.

The insurer's motion for a rehearing is denied and the request for rulings are refused in so far as they are inconsistent with these findings. The motion for rehearing and request for rulings are hereto annexed.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

Motion.

And now comes the Royal Indemnity Company, insurer in the above action, and moves that a date be assigned for a rehearing on the facts of said case on the ground that further evidence can be produced to support the contention of the insurer that no compensation is due the said employee.

ROYAL INDEMNITY COMPANY,
By its Attorney,
A. H. STETSON.

Insurer's Request for Rulings.

1. On all the evidence the said Patrick O'Connell is not entitled to compensation.

2. On all the evidence it appears that the said Patrick

O'Connell at the time he received the alleged injuries was an independent contractor within the meaning of the Massachusetts Workmen's Compensation Act, and not an employee, and therefore is not entitled to compensation.

ROYAL INDEMNITY COMPANY,
By its Attorney,
A. H. STETSON.

CASE No. 1647.

HERBERT WINN, *Employee.*
TOWN OF METHUEN, *Employer.*

EMPLOYEE OR INDEPENDENT CONTRACTOR. CASUAL EMPLOYMENT. AVERAGE WEEKLY WAGES. WORKING WITH OWN HORSE AND TEAM FOR TOWN. INJURED BY CHUTE OF STONE CRUSHER. HURT BEFORE REGULAR HOUR FOR BEGINNING WORK. CHRONIC HYPERTROPHIC ARTHRITIS. AGGRAVATION. COMPENSATION AWARDED.

The employee went to work with his horse and team for the town eleven days before the accident, receiving $5 a day. The amount of work that he would have had depended on weather conditions. He was employed in hauling stone from the town crusher, and was under the direction and control of the town's foreman. He was letting the chute down, so that the stone might run from the bin into his cart, when it fell and knocked him into the bottom of the cart. He has since been totally incapacitated for work.

Held, that he was a workman, that his employment was not casual, and that his average weekly wages were $12 a week, the amount the town paid its own drivers.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Herbert Winn *v.* Town of Methuen, this being case No. 1647 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, Levi W. Taylor, representing the employer, and Albert Schofield, representing

the employee, heard the parties and their witnesses at the Court Room, Town Hall, Methuen, Mass., Friday, March 26, 1915, at 1.30 P.M.

Emma Latimer Fall appeared as counsel for the employee, and Irving W. Sargent appeared for the employer.

The questions were: (1) Whether the claimant was an employee of the town or an independent contractor; (2) whether his employment was casual; (3) whether he received an injury arising out of and in the course of his employment; (4) what were his average weekly wages? It was agreed and the committee find that the town of Methuen had accepted chapter 807 of the Acts of 1913.

Herbert Winn, the claimant, testified that he lived at 103 Centre Street, Methuen, and that his regular business was wheeling coal. He went to work for the town with his cart and a pair of horses eleven days before the accident. He had worked for the town the year before. He was paid $5 a day for himself and team. He hauled stone, sand, brick, lumber or anything else they wanted from the crusher. If they were fixing cesspools he had to go and clean up around them, taking orders from various bosses according to what work he was doing. At the time of the accident, June 8, 1914, he was hauling stone from the crusher. The men started to work at 7.20 in the morning, and he had to get to the crusher early so as to get stone on the job to start the men. The accident happened at about quarter of 7. He drove up to the bin, and the boss there, Joe Altot, told him to go around on the other side and clean up the stone in the bin. He started to fill up his cart and had put in about two wheelbarrow loads when the rope, which controlled the chute, became caught in the pulley and the chute was held up in the air. He stood on the wheel of the cart to loosen the rope, and was manipulating the rope and pulley, when the chute came down suddenly and threw him into the bottom of his cart. He "felt as if a piece of plank came out of his side," his "back snapped" and then he "became bewildered." The next thing he remembered he was standing in front of the bin and Mr. Altot came up and asked him what was the matter. He told Altot that he had hurt his back. Altot then said, "I will load your team." He drove the

rest of the day, but did not leave the seat, and had a little boy along to help him. Some time in the forenoon he telephoned to his daughter to have a plaster ready to put on his back when he got home. He had his dinner with him, but did not eat it. When he got home two men helped him into the house. He lay down, but grew so bad that they took him upstairs. He suffered intense agony all night, and the next morning called in Dr. Cushman. The doctor visited him right along, and he remained in bed until some time after July 4. He had not been able to work since, cannot put on his shoes, because of his inability to bend his back, and has to have help in dressing. He has been in bed a good part of the time since the accident, and never has been able to sit up for a full day. Before the accident he was always a strong man, and had lugged coal for twenty years. He had been to the Boston Homœopathic Hospital, the Massachusetts General Hospital and to various private doctors for treatment. His eyesight has bothered him since the accident, and he suffers spells of severe pain in the back. He was forty-three years old the 20th of last March. He was in the coal and wood business for a number of years, and owned horses and wagons, but at the time of the accident owned only the team which he was driving. On June 10 his daughter telephoned to Mr. Lyons, one of the selectmen, and the latter came down to the house. Mr. Winn showed him his hip, which was scraped. Mr. Lyons asked him what doctor he had, and he told him Dr. Cushman was attending him, asking Mr. Lyons if that was all right. The latter said that it was. At the time of the accident B. Duvall was up in the bin getting down stone for his cart. Duvall's team and Winn's were loading at the same time, and that was why Altot sent Winn around to the other side of the bin. Mr. Lyons told him that because of the accident they would allow his son to work with the team. His son worked for eight days after the accident at $5 a day. They were supposed to work eight hours a day and to make five trips. Because he had trouble in making the five trips he went to work a little early. Mr. Dow, the superintendent of streets, had met him the Saturday before the accident, and told him that he would have to get in five trips a day. He replied that if he loaded the team he could not get in five trips

a day. Dow said he did not want any arguments, that Winn would have to get there, get the team loaded and get in five trips, if he did not he would be turned off.

John G. Toomey testified that he was a laborer and had worked for Mr. Winn in 1912, in the coal and wood business. Part of the time Mr. Winn worked with him delivering coal. He considered himself a pretty able worker, but had hard work to follow Winn. He had seen Winn carry hundred-pound bags of coal on his back steadily all day.

Sarah E. Winn testified that she was Herbert Winn's daughter. She bought a plaster for her father on the day of the accident. When she reached home her father was lying on the couch and seemed to be in great pain. A short time afterwards he was carried upstairs. He was at home for three weeks following the accident, and her father was in bed all that time. Since September, being at normal school, she has been at home only Saturdays and Sundays, and usually finds her father in bed. She has helped him to dress.

Dr. Howard L. Cushman testified that he saw Mr. Winn, professionally, the day after the accident. The latter was so sensitive he could not give him a thorough examination at that time. There was a very sensitive spot on his back about the size of the palm of your hand, at the left of the spine, about the level of the first, second and third lumbar vertebræ, shooting pains radiating from that in all directions, up and down, and through the abdomen, on the slightest motion. There was a slight abrasion of the hip bone. He strapped the back as tightly as he could. He diagnosed the case as strain of the back. He attended Mr. Winn from then until September 28. Such symptoms as Mr. Winn describes would not be unusual results from a fall such as he had. He made seven visits up to and including June 21. His charge was $1.50 a visit.

Dr. Florence N. Robinson testified that she was a graduate of Boston University Medical School, 1889. She attended Mr. Winn's children in 1893 and had attended the family off and on ever since. She had never treated Mr. Winn for any trouble up to the time of this accident. He came to her for treatment in October, 1914. He came to the office five or six times, and in the last three weeks she had been to his house several times.

She considered that he had a spinal injury, what kind she could not tell. There was no fracture or dislocation. He also complained of his eyesight and spells of dizziness.

Dr. Richard H. Lawler testified that he was a graduate of the Dartmouth Medical School, and had been practicing in Methuen since 1898 and is the town physician. He examined Mr. Winn yesterday (March 25). There were present Dr. Reed, Dr. Robinson, Dr. Cushman, Mr. Winn and himself. He found no objective symptoms, except a little pallor. He complained of deafness, but could hear the ordinary conversation. There was no curvature, no swelling in his back, no shortening, no stiffness, except that as he lay on his back there was some rigidity, some loss of motion in the hips. His reflexes were somewhat exaggerated, the left knee jerk being a little more so than the right. That is looked upon as an indication of some irritation of the spinal column. He could see no connection between Mr. Winn's injury and any possible deafness or defective vision. He would not expect a back as bad as Mr. Winn describes to follow a fall of 2 feet.

Dr. Victor A. Reed testified that he was a graduate of the Harvard Medical School. He was present at the examination yesterday and examined Mr. Winn. He thought Mr. Winn was suffering from neurasthenia. His examination was very unsatisfactory. Mr. Winn was so tender to the touch everywhere that he could not touch him, could not move him without his complaining of atrocious pains. His abdomen and muscles would stiffen up as if he had paralysis agitano. His reflexes were increased. Part of the time he could not hear, and at other times he heard very distinctly. A man in a neurasthenic condition, suffering a fall such as Mr. Winn describes, might develop his present condition.

Joseph Altot testified that he worked for the town and tended the stone crusher, and was working at the crusher on June 8, 1914. On the morning of that day he had one team backed up to the crusher, and Mr. Winn came to him and said, "Joe, what do you say, will you start to load up?" Winn then went to work loading up and had got two or three wheelbarrows full of stone when he came around to Altot and said, "Joe, I hurt myself. I cannot do any more." Altot went to

work, loaded up Winn's cart and started him off. Winn complained, said he had a lame back. He worked all the rest of the day, but Altot did not see him get down from his cart. Winn made pretty near as many trips a day as the others, except a couple of days when he was a load short. "Jack" Scannell gave the general orders as to what kind of work the drivers should do, and Altot gave the orders at the crusher. Winn had to do what he told him.

Robert W. Dow testified that he was serving his eleventh year as superintendent of streets for the town of Methuen. Eight hours constituted a day's work for Winn and the other employees. Mr. Winn went to work May 25, and if he had not been hurt would have had work all summer up to October 1, if he did not quit of his own accord. All the teams were hired except three which the town owned. Mr. Winn was under the control and direction of the town "just the same as if working on the town team." Altot was supposed to load the teams. The drivers of the town teams, who work seven days a week and also drive the fire apparatus, get $15 a week. A man driving a dump cart would get only $12 for six days. The driver of his own team gets $2 a day. The length of time the men worked depended on the weather. Brown, another driver who went to work the same day as Winn, lost three days up to July 16, then lost a week, then worked steadily up to August 8, got in four days between the 8th and 15th, worked August 17, 18, 19 and four hours on the 20th. From then he loafed until September 14, when he went to work and worked until the 26th. He worked three days in October. The drivers would average about five days a week.

The record of the Massachusetts General Hospital, introduced in evidence, stated that: "In the case of Herbert Winn, the X-ray shows no fracture or dislocation, but a condition of hypertrophic lumbar spine."

Dr. James Warren Sever of Boston, a specialist in orthopedics, appointed by the Board a member of the committee of arbitration to make an examination of Mr. Winn under the provisions of section 8 of Part III. of the act, reported as follows: —

I examined Herbert Winn of Methuen on the 30th of April at your request. I find that his accident occurred on the 8th of June last, and he stated that at the time he injured his back. Since then he has been unable to do any work, and has complained of considerable and increasing pain in the back, with weakness in the legs and general disability. He stated that he had been in bed at one time for three weeks, and at another time later for forty days on account of pain in the back. He stated, also, that he has become deaf in his left ear and at times his vision is not good. He has been once to the Massachusetts General Hospital for X-ray examination, some time last January or February, he does not remember which. He was told to come back there for treatment, but was unable to do so.

Examination showed that he had a very stiff, irritable and tender back, which disables him for working. An X-ray which I took showed a moderate condition of so-called hypertrophic arthritis of the lumbar vertebræ, more marked particularly of the second. His symptoms are considerably more than they should be in relation to the amount of change he has in his vertebræ. I do not doubt, however, that he has considerable pain. I believe that he is unable at present to do any work, and will probably be unable to do any for a long time unless he has proper treatment, which he apparently has not had up to the present. His back requires first of all fixation and rest. This can be obtained either by putting him to bed, or by putting a stiff corset or plaster jacket on him and allowing him to go about. At first this jacket or corset might be uncomfortable, but it is the only way in which he can get relief. His back is in such condition that it needs support. By such means he will gradually improve, and possibly in the course of a few months he may be able to go back to his usual occupation. I cannot say whether or not the accident had anything to do with the arthritis in the spine. It might or might not, but I am unable to decide.

JAMES WARREN SEVER, M.D.

MAY 4, 1915.

The committee of arbitration finds, upon all the evidence, that Winn in the work at which he was engaged when injured was a workman employed by the town and not an independent contractor. It was not in the care and management of his horse and vehicle that Winn was injured. He was adjusting a pulley which controlled the chute which let down the stone with which he was to fill his cart. The wheel of the cart was simply used as a point of vantage from which to reach the rope attached to the pulley. Neither does it appear that he was acting outside the scope of his employment. He had the implied consent of Altot to load his cart, and, moreover, from this

fact and the fact that another driver (Duvall) was up in the bin getting down stone for his (Duvall's) cart, it appears that this loading by the drivers was a general practice. As to the contention that his day's work had not commenced when he was injured, the evidence shows that the boss at the crusher, Altot, was on the job when Winn started to load, and at that time another cart was engaged in loading. Even if this were not the fact it would not debar Winn. Surely employees are not to be penalized for beginning work a few minutes before the scheduled time. Winn had no contract to execute a specific amount of work per day for a specified sum. The drivers were expected to make five trips per day, but employees commonly are held up to perform a certain amount of work per day.

The committee finds that his employment was not casual but of a seasonal nature, similar to that engaged in by carpenters, bricklayers and other out-of-door workers whose continuity of employment depends upon weather conditions.

The committee finds that up to the time of his fall Winn was a healthy, rugged man, but that since then he has not been able to work owing to the pain which he suffers in his back. It would appear from the reports of the Massachusetts General Hospital and Dr. Sever that he may have had a condition of hypertrophic arthritis existent prior to his fall, which, however, did not disable him or cause him any trouble, but that the fall aggravated this condition to such an extent as to render it disabling.

The committee finds that his average weekly wages were $12 a week, this being the amount allowed for a driver of a two-horse cart employed continuously, as testified to by Superintendent Dow.

The committee finds that Herbert Winn sustained an injury arising out of and in the course of his employment by the town of Methuen, which has totally incapacitated him for work from the time of said injury up to the time of this hearing, and that he is entitled to compensation at $6 a week from the fifteenth day after said injury up to the present time, compensation at this rate to continue during such time as total incapacity exists, but not for a longer period than five hundred weeks. Under this finding there is due the employee at the time of this hearing $256.29.

The committee further finds that for reasonable medical services furnished during the first two weeks after the injury he is entitled to $10.50.

Requests for rulings of law and findings of fact made by the insurer and the employee, and appended herewith, are granted in so far as they are consistent with these findings, and denied in so far as they are inconsistent therewith.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

FRANK J. DONAHUE.
ALBERT SCHOFIELD.

Levi W. Taylor dissents.

Insurer's Requests for Rulings of Law and Findings of Fact.

In the above case the town of Methuen, employer, hereby requests the following rulings of law: —

1. Upon all the evidence the employee is not entitled to compensation.

2. Upon all the evidence the employee was an independent contractor, acting by virtue of a contract made with the town of Methuen, at the time of the accident.

3. Upon all the evidence the employment of the employee by the town of Methuen was but casual.

4. If it shall appear that the employee voluntarily and without extra compensation began work on the morning of the accident about thirty minutes earlier than he was required to under his contract or other arrangement with the town of Methuen he is not entitled to compensation.

5. If it shall appear that the employee had at all times complete control of the horses and the wagon supplied by him to the town of Methuen, subject only to the direction of the representatives of the town as to the destination to which he should transport materials for road building, he is not entitled to compensation.

By IRVING W. SARGENT,
Its Attorney.

In the above case the town of Methuen, employer, hereby requests the following findings of fact: —

1. The employee voluntarily, without additional compensation, began to work on the morning of the accident at least thirty minutes earlier than he was required to by his contract or other arrangement with the town of Methuen.

2. The employee had at all times complete control of the horses and the wagon supplied by him to the town of Methuen, subject only to the direction of the representatives of the town as to the destination to which he should transport materials for road building.

By IRVING W. SARGENT,
Its Attorney.

Employee's Requests for Rulings of Law and Findings of Fact.

In the above case Herbert Winn, employee, hereby requests the following rulings of law: —

1. Upon all the evidence the employee is entitled to compensation.

2. Upon all the evidence the employee was not an independent contractor.

3. Upon all the evidence the employee was in the course of his employment.

4. Upon all the evidence the employee's injury arose out of his employment.

5. Upon all the evidence the employee's incapacity for work was not present before the injury, but it followed the injury, has continued since the date of the injury and is still present.

6. Upon all the evidence there was no serious and willful misconduct on the part of the employee (as provided for in section 2 of Part II. of the Workmen's Compensation Act) which was the cause of his injury.

7. Upon all the evidence the town of Methuen was in the habit of hiring the same employees from season to season.

8. Upon all the evidence the employment of the employee by the town of Methuen was not casual but of a seasonal recurrent nature.

9. If it shall appear that the employee began work on the morning of the accident somewhat earlier than the usual time

at which the town employees get to work because of instructions both direct and indirect from the town's representative he is entitled to compensation.

By EMMA L. FALL,
His Attorney.

In the above case Herbert Winn, employee, hereby requests the following findings of fact: —

1. The employee began to work on the morning of the accident earlier than the usual time at which the town's employees go to work because of instructions both direct and indirect from the town's representative.

2. The employee, although real owner of the horses and wagon which he was driving, was not the temporary owner, inasmuch as the town hired him and his team at so much per day.

3. The employee had over his team only such control as any driver would have over any team he was driving.

4. All initiative in connection with the work being done was taken by the town, the employee following such orders as were given him.

By EMMA L. FALL,
His Attorney.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room of the Board, New Albion Building, Boston, Mass., on Thursday, Aug. 5, 1915, at 10 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was introduced at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertinent thereto.

The general principles of law which govern cases of this kind have been considered frequently and are well settled. (Shepard *v.* Jacobs, 204 Mass. 110, 112, and cases there cited.) The implication in such cases where a servant is deputed to perform work for third persons by means of a horse-drawn or similar

vehicle belonging to his master is that as to such matters as pertain to the health and safety of the horses and the safety of the vehicle the owner of the team retains in his driver a right of control. (Huff *v.* Ford, 126 Mass. 24; Pigeon's Case, 216 Mass. 51, 53.) In determining whether in such a case the person loaned is the servant of his general employer or of the person to whom he is loaned, the test of the right to control is applied not merely to the general business which the act is intended to promote, but the particular business which calls for the act, in the smallest subdivision which can be made of the business in reference to control and proprietorship. (Shepard *v.* Jacobs, *supra;* Coughlan *v.* Cambridge, 166 Mass. 268; Christiansen *v.* McLellan, 133 Pac. 434, 435.) This is a question of fact. (Preston *v.* Knight, 120 Mass. 5, 8; Cain *v.* Hugh Nawn Contracting Company, 202 Mass. 237.) A man may be a contractor as to part of his service and a servant as to part. (Shearman & Redfield on Neg. (6th Ed.), § 165; *in re* Powley, *in re* Vivian & Co. Inc., *in re* Travelers Insurance Co., 154 N. Y. Supp. 426.) Where an independent contractor had finished a building, it was held that in throwing waste material from the roof he was acting as a servant of the owner. (Smart *v.* Justh, 24 App. D. C. 596.)

In the case at bar the claimant was injured not in the care and management of his team, but while adjusting a pulley which controlled the chute which let down the stone with which he was to fill his cart. The evidence shows that at the crusher Winn was subject to the control of Altot, who worked for the town and was in charge at the crusher.

The evidence shows and the Board finds that Herbert Winn, the claimant, was an employee of the town of Methuen at the time he received the personal injury on June 8, 1914; that said personal injury arose out of and in the course of his employment; that the said employee received the personal injury referred to as he adjusted a pulley controlling the chute which let down the stone to fill his cart; that the loading of his cart was an implied part of his contract of hire as an employee of the town of Methuen; that Winn's employment was of a seasonal and not of a casual nature; that the personal injury so aggravated and accelerated a dormant condition of hyper-

trophic arthritis that he became totally incapacitated for work, said total incapacity continuing; that the average weekly wages of the employee were $12, this being the average weekly wages of a person performing the work of a driver for the town of Methuen during the twelve months prior to the date of the injury; and that there is due the said employee to March 26, 1915, in accordance with the findings of the committee of arbitration, the sum of $256.29, and a weekly payment of $6 thereafter, subject to future revision after due hearing, in accordance with Part III., section 12, and the general provisions of the act.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1651.

DEPENDENTS OF TODDER YOTSKO (DECEASED), *Employee.*
MAURICE F. DRISCOLL, *Employer.*
ROYAL INDEMNITY COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DEATH RESULTS FROM THE INJURY. CHAIN OF CAUSATION. ALCOHOLISM. DELIRIUM TREMENS. EMPLOYEE RECEIVES INJURY AND RECOVERS THEREFROM. SUBSEQUENTLY DEATH RESULTS FROM DELIRIUM TREMENS, DUE TO ALCOHOLISM, UNAFFECTED BY INJURY. CLAIM DISMISSED.

The employee received an injury on June 19, 1914, while engaged with five other men, lifting a heavy case, weighing about 500 pounds. He complained of a pain in the back, and this was attributed to the lifting of the case. There was no evidence to show that a box had fallen at the place of his employment or that any other injury had been received, except by reason of the strain of lifting. The effects of the injury were removed within a period of not more than three weeks after the date of same. Subsequently, the employee was admitted to the State Infirmary, suffering from delirium tremens, from which he died. The medical evidence indicated that in order to show a causal relation between the injury and delirium tremens it must be shown that the latter condition arose in a period of from two to five days after the occurrence of the injury.

Held, that the claimant was not entitled to compensation.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of the dependents of Todder Yotsko, deceased, *v.* Royal Indemnity Company, this being case No. 1651 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, representing the Industrial Accident Board, chairman, Leo J. Dunn, representing the dependents, and Walter A. Ladd, representing the insurer, heard the parties and their witnesses at the Hearing Room, New Albion Building, Boston, Mass., on Monday, April 5, 1915, at 2 P.M.

Todder Yotsko, a lumper, receiving an average weekly wage of $10, claimed to have sustained injuries to the spine and abdomen by reason of lifting a heavy case on June 19, 1914. Compensation was paid by the insurer for two weeks. On July 16, 1914, the employee was sent to the Tewksbury State Infirmary, where he died on July 20 of alcoholism and delirium tremens. The dependents claimed that his death was a result of the injury sustained on June 19, 1914, and the insurer contended that there was no causal connection between the death of the employee and a personal injury arising out of and in the course of his employment.

Dr. Howard K. Tuttle, having been asked to submit the records of the Tewksbury State Infirmary in the case, testified that the employee was admitted on July 16, 1914; no history was given of previous illness, but the patient said he had lifted a heavy box and had not been able to work for four weeks on account of the pain and lameness in the abdomen and back; he admitted, also, that he was addicted to alcohol in excess, and it was learned from another patient that he had been seen to drink a pint of whiskey in the station before leaving Boston. His temperature was 99, pulse 80, respiration 82; his mental condition was apparently normal; he was quiet and orderly, but untidy. Examination showed heart and chest negative and tenderness in the abdomen. There was a fatty tumor, the size of a fist, in the right lumbar region, and a small one between

the spine and the right scapula. The diagnosis of alcoholism was made, and the patient was sent to the out-patient department as a hospital helper. On July 19 the patient was admitted early in the morning with delirium tremens; he was exceedingly wild; after going through the window he was restrained and put in a cold pack until noon, after which he was quiet for a time, and then started in again, throwing himself around the floor and biting and striking; he was put in a second cold pack. On July 20 it was noted that the patient had obtained no sleep during the night; he became very restless and weak, and died at 7.30 A.M. He had been treated on his admission with hyoscin, and later with morphine, bromides, ergot and digitalis. It was the doctor's opinion that alcoholism accounted for the delirium tremens in this case, and that there was no connection whatever between the injury and the employee's death from delirium tremens. At the time of his admission to the infirmary he was physically well, so far as physical examination and history showed, and was immediately assigned as hospital helper; he was picked out as a man who needed no treatment, and was capable of doing the necessary work of a helper. He had come into the hospital on a permit, as many others had who were physically well, but were out of work or hungry; if a man is ill, he is given a bed in the hospital. He said he had had an injury, but examination had revealed nothing serious at all; the tumors were of no consequence. The doctor had made the diagnosis of alcoholism at the time. Everybody who comes into the institution is given a thorough physical examination. In this case there had been found no physical effects of an injury.

Dr. Samuel W. Myers, who first treated the employee, testified that he was called to see the employee in a near-by drug store on July 20, 1914; he presented the appearance of a man in very much pain and shock; he could hardly walk; he took the employee to his office and examined him, finding that he had a strain of the lumbar region of the spine and sacroiliac joints; he strapped him up. The patient complained of pain over the bladder region and tenderness in the left groin. On examination of the urine he found some albumen; upon microscopic examination he found some bladder cells. He offered to send the employee to a hospital, but he refused to go. He

supplied him with medicines and treated him until the 24th at his house twice a day, after which date the employee came to his office for treatment. He found, also, that he had a chronic bronchitis. He had given him some sedatives, sodium bromide and heroin, and other medication for bladder inflammation. After getting out of bed, in about a week or ten days, he began to show signs of nervousness, twitchings of the hands and general nervousness. The employee had an idea from the very first that he was mortally injured. The doctor had forbidden him to drink any liquor until the urine cleared up. The albumen in the urine indicated some affection of the bladder or kidneys, which the doctor thought was probably due to direct injury to the bladder. At the end of the third week of his treatment there was still some tenderness of the abdomen, although not so severe as at first; the spine was better, but the hands twitched, knee jerks were increased, and the patient acted nervous. Such signs usually precede delirium tremens, and he was giving him certain bromide mixtures right along. It was the doctor's opinion that the accident brought about the delirium tremens, probably deferred by the treatment in bed with sedatives required for pain and nervous shock originally received. The urine test made the third week was negative, which indicated that the employee was well, so far as the bladder was concerned, for that time; the inflammation was gone, but there was still pain due to the contusion in the lower part of the abdomen. The doctor understood that the employee was lifting a heavy box with others, when some one let it go, and he tried to hold it on his knee, but could not; he let it go and fell with it, striking the lower part of his abdomen as he fell on the box. If the inflammation of the bladder had been of a chronic type it would not have cleared up. For the tenderness in the abdomen and the sprain of the back the doctor said the employee needed strapping for possibly another month. He thought the hospital authorities were mistaken in putting the employee to work as an able-bodied man. He thought that the man's habits and his inability to receive the proper medical treatment predisposed him to an attack of delirium tremens, following a severe injury.

Bennie Mells, a fellow employee of the deceased, testified

that he recalled the lifting of the case, weighing about 500 pounds; it required six men to lift it, to place it upon his wagon; there had been a fire at the place, and they were removing the cases. Todder Yotsko was one of the men who lifted this case, and it was three or four days afterwards that Yotsko told him that he had some pain in his back as a result of the heavy lifting. No box had fallen, nor had the deceased fallen on a box. He did not see Yotsko get hurt in any way. This case was carried away on the 11th of June; there was just one load of three cases. Outside of this the employee carried bags and cleaned out the shop; he did no hard work at all. It was the custom of the employee to stay away from work one day every week; he drank, but could do his work.

Dr. Charles L. Ogden, who examined the employee at the request of the insurer, testified that he had received the history of an accident occurring on June 19, 1914, while the employee was helping to lift a heavy case weighing 500 pounds, and that he had sustained a strain of the back and of the muscles of both thighs. At the time of his examination the doctor found the patient slightly stooped and unsteady; he had a slight cough and appeared quite nervous. He said he felt well except as regarding the muscles of both thighs and back; there was a distinct tremor in both hands; heart and lungs were normal; there was a fatty tumor on the back just below the shoulder, which had been present for a number of years and caused no pain or discomfort; pain came in stooping, in the muscles of the lower lumbar region. The back had been strapped with adhesive plaster. It was then about two weeks after the injury. After hearing the testimony and reports in the case the doctor stated that it was his opinion that the accident had nothing to do with the delirium tremens which caused the death of the employee; he did not think that the injury in itself was sufficient to bring about such a result. The man had complained, but there was no injury that could be seen; the complaint was of stiffness of the muscles; he had told the doctor that he was lifting a heavy box and strained the muscles of the back and thighs; he had not said anything about falling. The doctor thought that alcoholism was the cause of the delirium tremens, and that the employee would have

developed it even though he had not met with an accident; he did not consider that the deceased had sustained a severe accident. The injury had nothing to do with the nervousness.

Dr. William J. Daly, having heard the evidence, was asked to give his opinion on the case, as to whether or not there was any causal relation between the accident, as described, and the death which was caused by alcoholism and delirium tremens, as stated by the authorities of the Tewksbury State Infirmary. He said he could find no causal connection. Delirium tremens has a beginning and an end, beginning in disorientation, — a lack of contact that an individual has with his environment in his relation to time and space. After drinking for a considerable time he has mental disturbances, clouding of consciousness and hallucinations of vision and hearing, which is known as delirium tremens; but the whole thing dates in its inception from the disorientation. In this case there is no history of either disorientation or alleged disorientation; there was no complaint of disturbance of hearing or vision. There is the history of an accident concerned with lifting a heavy burden. A trivial accident in a drinking man may produce delirium tremens, but to do so and in order that a causal connection exist it must do so within a certain space of time; that time period is from two to five days after an accident; if it were a day or two more beyond the five days it would be doubtful. Where a severe accident is accompanied by excessive hemorrhage, delirium tremens is precipitated almost immediately. In this case, the man not having been disorientated until July 19, his delirium tremens did not begin until July 19. It would be an utter impossibility, according to all teachings of medical science and all accident authorities, for an interval of that length to exist between an accident, trivial or severe, and an outbreak of delirium tremens at that time, and have a causal connection exist. In the doctor's opinion the delirium tremens in this case was brought about by a state of chronic alcoholism which was made worse by continued drinking just short of intoxication for a number of days; that is what brings on every case of delirium tremens, with very few exceptions. The primary, secondary and tertiary cause is always chronic alcoholism. Treatment cannot defer delirium tremens.

Maurice F. Driscoll, the employer, testified that the deceased, while in his employ, had been accustomed to "loaf" every Monday, or every other Monday. He had only heard of an accident to Yotsko; he did not know of any; he heard of it in different ways. Melle had told him that Yotsko helped to lift a case weighing 400 or 500 pounds at Central Street, and later in the week he stopped work; when he came around again he said he "got hurt on that case." When he first saw him the employee told him he was sick, and on being asked what was the matter said his back was sore. At that time he was trembling all over and seemed to be in a terrible shape, but all he said was that he was "sick in the back." He came back three or four days later and asked what he could do for him. He gave him $5 and told him to lie off for a while; again he returned and asked what more he could do, and Mr. Driscoll thought it best to get him sent away somewhere. He got a policeman to take him in charge, and he was finally sent to Tewksbury. He did not know about any accident. He thought the employee had what he called "the shakes" both times he saw him. He had shown up mornings in rather bad shape from alcohol frequently, but he did his work. He had not refused him work, but he did not think he was able to do it at those times on account of his condition from liquor.

Nastacia Yotsko, a daughter of the deceased, testified that she was seventeen years of age and had three brothers and two sisters in Austria; they were, respectively, fifteen, thirteen, eleven, nine and seven years of age. Her father was already in this country when she came; she found work about three weeks after she arrived, but her father supported her. She received $5 a week during the last year. She lived in the same house with her father, and he paid her expenses; she gave him the money she earned. Her father supported the children in Austria, sending money to them every two or three weeks, or once a month. After the mother died her sister took care of the children and has the care of them now. The money was sent to her. Receipts from the various banks, through which the money was sent, signed by the mother's sister, were offered in evidence. The name of the sender was shown to be that of the father or Nastacia, who sent the money

in her father's stead if he were busy. Her father had paid for her board and clothing. She did not know what he did with the money she gave him. He had given her $1 a week for her own use, and sometimes more if she needed it. Her father had one room at 25 Wall Street, and she lived in the same house; he paid her room rent. Her father may have sent other money than she knew about to the children, but she did not have any other receipts in her possession.

Annie Rocosevitch testified that Nastacia Yotsko lived in her house before the father died, and he paid her room rent every week himself, — 75 cents "for sleeping."

Theodore Kozak testified that he came from the same village in Austria as the family of the deceased. He returned to the old country a year ago last March, and took some money from Todder Yotsko to his wife and children. The mother died just a few weeks before he left again for this country, and the children passed into the care of the mother's sister, Nikolani Yshevan. Yotsko had told him that he sent money regularly to the children, but he had not seen him do so. He saw Yotsko while he was ill the last time.

The evidence shows that any injury sustained by the employee probably was received while he was engaged, together with five other men, in lifting a heavy case weighing about 500 pounds, on June 19, 1914. This is reported as probable, because three or four days later he complained of having pain in the back, which was attributed to such lifting. There was no evidence to show that a box had fallen at the place of his employment or that the employee had fallen upon a box, as was stated by Dr. Myers as the history which was given him by the employee. All the medical evidence showed that all the effect of any injury, which the employee may have sustained as the result of the lifting of the case, had disappeared within a period of not more than three weeks after the date of the alleged occurrence. Dr. Myers stated, however, that the employee, at the time of his last visit, which was about three weeks after the date of the injury, still complained of having pain in the back.

The committee finds, upon all the evidence, that there was no causal relation between a personal injury arising out of and

in the course of the employment of Todder Yotsko and the condition of alcoholism and delirium tremens which caused his death.

The committee of arbitration further finds that the children of the employee, who reside in Austria, were wholly dependent in fact upon the earnings of the deceased employee for support at the time of his death. This latter finding is made in the event that the Board should find that the committee is in error on the question as to whether or not the death of the employee had any causal relation with a personal injury arising out of and in the course of his employment.

JOSEPH A. PARKS.
LEO J. DUNN.
WALTER A. LADD.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, May 13, 1915, at 11 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows, and the Industrial Accident Board finds, that there was no causal connection between the death of the employee, Todder Yotsko, and a personal injury arising out of and in the course of his employment, the death of the employee resulting from a condition of alcoholism and delirium tremens. Therefore the claim of the dependents for compensation is dismissed.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1655.

AGGIE J. BOOTH, WIDOW AND ALLEGED DEPENDENT OF JOSEPH BOOTH, *Employee.*
PACIFIC MILLS, *Employer.*
AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DEATH RESULTS FROM THE INJURY. DEPENDENCY OF WIDOW. DECEDENT FALLS FROM LADDER. DEATH OCCURS FROM HEMORRHAGE DUE TO CONCUSSION. WIDOW CONCLUSIVELY PRESUMED TO BE WHOLLY DEPENDENT. COMPENSATION AWARDED.

The employee fell from a stepladder on Feb. 3, 1915, while employed by the subscriber, the only external mark of injury being a bruise and discoloration of the right ear. The medical examiner stated that, in his opinion, the decedent died from concussion with possible contusion of the brain and resulting hemorrhage from superficial vessels caused from the blow upon the right side of the head. Decedent's widow lived with him at the time of his injury and death. *Held*, that the widow was entitled to compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Aggie J. Booth, widow and alleged dependent of Joseph Booth *v.* American Mutual Liability Insurance Company, this being case No. 1655 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Nathaniel E. Rankin, representing the widow, and Paul R. Clay, representing the insurer, after being duly sworn, heard the parties and their witnesses at the Court House, Lawrence, Mass., on Monday, April 5, 1915, at 10.30 A.M.

Archie Frost of Coulson & Frost appeared as counsel for the widow, and Irving W. Sargent of Sweeney & Cox appeared for the insurer.

The sole question in this case was whether the death of the employee, Joseph Booth, on Feb. 5, 1915, was the result of an injury arising out of his employment through a fall from a

stepladder on Feb. 3, 1915, while at his work. His average weekly wages were $15 as agreed by the parties.

Dr. George W. Dow, medical examiner of Lawrence, testified that he performed an autopsy on the deceased with Dr. Cutter and Dr. Thomas present. The only external mark of any injury that was found was a bruise and discoloration of the right ear. There was no fracture of the scapula, but there was a bruise of the large muscles over the scapula. The ecchymosis of blood where there were blood clots showed that the deceased had received quite a hard blow on his shoulder. There was no injury or fracture of the spinal cord. The removal of the scalp disclosed no signs of any external injury to the head, with the exception of the ear. There was a small contusion of the periosteum. The dua mater directly beneath the bruised scalp and periosteum had a marked, reddened appearance. The interior of the cerebellum and medulla oblongata were normal. The hemorrhage and diffusion of the blood were particularly noticeable, and extended just in the region directly behind where he received the blow on the side of his head, or, in other words, behind the wounds and marks made by the blow on the outside of his head and ear, viz., on the right side. Dr. Dow stated to the committee that in his opinion the deceased died from a concussion with possible contusion of the brain and resulting hemorrhage from superficial vessels caused from a blow upon the right side of the head. In his opinion the hemorrhage was due to the concussion and possibly to a contusion also in the structure of the brain. He stated that his condition was not a result of an apoplectic shock; that his heart, liver, kidneys and stomach were all apparently normal; that there was no apparent injury to the brain but a diffusion of blood; that practically two-thirds of the brain were congested and engorged with blood, and for that reason he thought possibly there might be a contusion to cause such a hemorrhage, although he would not say positively. In his opinion the blow was sufficient to cause a concussion enough to rupture the vessels without a contusion. There was possibly a contusion, but it was not sufficient to show any injury to the brain substance itself; a contusion would mean a more injured area than a mere rupture. He

stated that a concussion is a shock sufficient for the time being to upset the action of the brain, and that concussion caused the death in this case; that there were not sufficient external injuries to cause his death. The deceased was unconscious from the time of the injury to his death.

Dr. Arthur H. Cutter testified that he saw the deceased shortly after his arrival at the hospital, and that he never regained consciousness and became paralyzed. He was present at the autopsy and he was of the same opinion as Dr. Dow, viz., that his death was caused by the blow resulting in concussion of the brain sufficient to cause death. He saw nothing about his condition that indicated apoplexy, but if the deceased had had apoplexy he would have expected to find a localized blood clot.

Dr. Edward O. Thomas testified that he was present when the autopsy was performed, and that he agreed substantially and held the same opinion as the other doctors who were present at that time.

The following statement from Mrs. Eddie Fennemore was received in evidence after examination of the same by counsel, and with their consent, said witness being deaf and dumb: —

> I have worked with Mr. Booth for about twenty-five years. I have known him for that time and found him to be a very nice man. I never saw him drunk. About 8.30 on a Wednesday morning I was standing about 6 feet from the ladder on which Mr. Booth was standing. I was watching him put on the belt on the pulley. He was on the second top step of the ladder, I think. His head was bent over. When he was putting the belt on the pulley it became very tight causing him to become overbalanced. Just then the ladder moved which caused him to become overbalanced. He fell down striking hard against a table. I screamed and ran to him and he was unconscious. When I got there he was on the truck and there were several people around him. It was a short distance from the ladder, and I think it was about 5 or 6 feet. The ladder moved even though the man was holding it. It looked old and did not seem to be real strong. People hurried me over to see him on the floor. I don't know whether or not there was electricity in the pulley.
>
> MRS. EDDIE FENNEMORE.

Mrs. Alice Harrity testified that she was working in the Pacific Mills; that on the morning of the accident she was within 30 feet of the deceased and saw him trying to put on

the belt; that she could not see the whole of the ladder and also the pulley which was holding the ladder, and the deceased was on the second round from the top. The ladder ran up close to the ceiling and the pulley was next to the wall. He was in the act of putting a belt on a pulley when he fell down. At this time he had the belt in both hands and his hands were above his head; he fell over backwards; it seemed to her as though he and the belt fell together to the floor. The witness examined his heart after he fell and could not seem to get much heart beat; she could not feel his pulse and he never regained consciousness. At the time the deceased fell she was looking over the glass in the partition of the room. The ladder had braces on it consisting of pieces of lumber.

Krikur Tatian testified that he worked in the print works with the deceased, and on February 3 the belt came off the pulley and Mr. Booth endeavored to remedy it; that he fell down on to the floor, and he, the witness, was standing on the table back of the deceased when he fell. He was holding up the belt with a stick in the act of assisting the deceased. He thought the belt was about 15 feet long and about 4 inches wide. He had seen this belt put on the pulley before, but had never seen the ladder previous to this time, and he thought Mr. Booth had never used this ladder, as far as he could tell. He did not notice braces on the ladder.

Cashig Horneian testified that he was looking right at the deceased at the time he fell; that the room was about 12 feet high and the pulley was attached close to the ceiling and an adjacent wall; that the deceased employee stood while doing this work on a stepladder which was above the head of the witness, and seemed more than 6 feet above the floor, and both arms of the deceased were raised above his head just before he fell; that he was pulling on the belt in order to put it on the pulley and he suddenly fell in the direction from which he was pulling the belt sideways; and that he fell sideways in this same direction striking his head on the top of a table which was about 2 feet above the floor and then fell, striking the floor.

Mrs. Aggie J. Booth, widow of the deceased, testified that her husband had not been sick for four years, and he seemed

perfectly well the morning of the accident; that he made no complaints to her whatsoever of any ailments, and he was a strictly temperate man.

The committee is satisfied from the weight of the evidence, and accordingly finds, that the death of the deceased on Feb. 5, 1915, resulted from the injury sustained on Feb. 3, 1915, by the fall from a stepladder, and that said injury arose out of and in the course of his employment; that the claimant, Aggie J. Booth, is his widow and was living with him at the time of his injury and death, and therefore conclusively presumed to be wholly dependent on the deceased, and is entitled to a compensation of $10 per week for a period of four hundred weeks from Feb. 5, 1915, the date of the injury, said weekly compensation being two-thirds of his average weekly wages, which amounted to $15.

DAVID T. DICKINSON.
NATHANIEL E. RANKIN.
PAUL R. CLAY.

CASE No. 1658.

ELLEN McCARTHY, WIDOW OF DENNIS C. McCARTHY, *Employee.*

RUETER & Co., *Employer.*

MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DEATH RESULTS FROM THE INJURY. DISEASE. CHAIN OF CAUSATION. NEW CAUSE INTERVENING. CONJECTURE. ACUTE MILIARY TUBERCULOSIS. EVIDENCE LEAVES COMMITTEE IN DOUBT AS TO RELATION OF CAUSE AND EFFECT BETWEEN INJURY AND DEATH. CONJECTURAL WHETHER INJURY LOWERED RESISTANCE AND LIGHTED UP DORMANT CONDITION OF TUBERCULOSIS.

The evidence shows that the decedent was a helper upon a wagon owned by the subscriber. While engaged in removing empty barrels from a cellar one of the barrels slipped and injured both feet, on Sept. 14, 1914. His attending physician stated that he found an abrasion on the right leg about 5 inches above the ankle, and another abrasion below the ankle. The employee complained that his foot was very sore. The abrasion became infected, and he attended the employee until September 28, when the foot appeared to be progressing favorably. He returned to work on November 7, and remained until November

28, when he was obliged to leave. He was treated at the hospital on December 26, and was discharged on Jan 15, 1915, as "unimproved." He received treatment until Feb. 2, 1915, at home, at which time he died, the cause of death being stated as acute miliary tuberculosis.

Held, that it was merely conjectural whether or not the injury lowered the resistance of the employee and lighted up a dormant condition of tuberculosis.

Review before the Industrial Accident Board.

Decision. — Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Appealed to Supreme Judicial Court.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Ellen McCarthy, widow of Dennis C. McCarthy, *v.* Massachusetts Employees Insurance Association, this being case No. 1658 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, representing the Industrial Accident Board, chairman, Arthur J. Santry, representing the insurer, and James Buchanan, Jr., representing the employee, heard the parties and their witnesses at the Hearing Room, New Albion Building, Boston, Mass., on Wednesday, June 23, 1915, at 10 A.M., continuing July 28, 1915, at 9 A.M.

Bernard Killion appeared for the dependent, and John W. Cronin for the insurer.

The question at issue in this case was whether or not the acute miliary tuberculosis from which the employee died had a causal relation to a personal injury arising out of and in the course of his employment.

Dennis McCarthy, a striker on a wagon, earning $19.34 a week, while pushing an empty barrel up skids in a cellar with a single rope pull, sustained injuries to both feet on Sept. 14, 1914, by reason of the slipping of the barrel. The barrel weighed about 180 pounds empty. This accident occurred on the run of about 20 feet in length. At the request of the insurer's physician he returned to work on November 7, and remained at work until November 28, when he was obliged to give up. He was sent to the Peter Bent Brigham Hospital on December 26, where he remained until January 15, 1915, being discharged as "unimproved." He received treatment until

Feb. 2, 1915, at home, at which time he died, the cause of death as given on the certificate being "acute miliary tuberculosis." It was agreed that the injury occurred in the course of the employment, and that the employee was incapacitated for work until the time he returned to work.

Michael M. Dolan, a driver in the employ of Rueter & Co., testified that the deceased was his helper on the wagon and had been so for four or five years. McCarthy was about 5 feet, 11 inches in height, and weighed about 160 pounds. Their work was the handling and delivering of barrels and hogsheads, weighing from 250 and 300 pounds to 800 pounds. On September 14 they were taking out an "empty" when the accident happened. The bulkhead was so narrow he could not see how it occurred, but they lost control of the barrel in some manner and it turned on the skid. Mr. Dolan saw the barrel turn, and then saw the employee on the floor of the cellar. When he went around and into the cellar Mr. McCarthy was sitting on a box holding his feet, and the barrel was on the floor beside the skids. McCarthy did not say anything and seemed to be dazed. He was very pale and looked very bad, but later was able to go with him, although walking lame, and put the team up. He went down to the office where a statement was made of the injury to the shipper, Mr. Croak. When McCarthy returned to work three weeks later it was evident that he had lost weight and was not in a good condition. Mr. Dolan found it necessary to help the employee in his work, as was customary if a man was not feeling well; McCarthy was not able to do his full work. In a very deep or bad cellar, he, being stronger than McCarthy, usually worked at the bottom and McCarthy at the top. After the injury McCarthy was not able to hoist the beer; it had never hurt him before. They had naturally talked about the injury. McCarthy limped and believed that there was some small bone broken in the foot, until it was discovered there was not; he had also said that he was obliged to return to work, having a big family to support. The insurance company's doctor had told him to go back to work, and had said that he was not badly hurt. McCarthy was pushing the barrel on that day, as he pulled it, and Dolan thought he must have slipped in some way. He saw the barrel

fall on the concrete, alongside of McCarthy; it struck the employee a glancing blow as it fell. After McCarthy's return to work he seemed to have no ambition; he had lost weight and had diarrhœa. Before the injury he was the best man he ever had in lifting and everything; he was a good, strong man. When he returned to work he seemed to have a general breakdown, and he helped him all he could. In the particular cellar where the injury occurred McCarthy worked below because he was longer armed than he, and could push the barrel farther up; they arranged such matters between them. He had never known the employee to lose a day through sickness while he was his helper; McCarthy had worked every day so far as he could recall.

Dr. Joseph L. Lockary, the family physician of the employee, testified that he had known the employee for nine or ten years. When he was called to treat him after the injury he found an abrasion on the right leg about 5 inches above the ankle, and another a little below; McCarthy also complained of a very sore foot. The abrasions became infected and the doctor treated them. The foot was so bad the third or fourth day that he thought the small bone of the leg must be broken, but an X-ray disclosed that it was not. There must have been a severe internal injury of the foot, there was so much pain, lameness and tenderness; he knew it was more severe than the external symptoms would indicate. An X-ray would not show an inflammatory condition; it was the bone, but no fracture. He attended him until September 28, when the foot seemed to be progressing favorably, and he told his patient that if he continued suffering he had better get in touch with the insurer and he would be saved expense; he told him to continue treatment. In the ten years he had known the employee he had not attended him for any serious sickness; he was in good physical condition, but he was not a stout man. Being asked if the germs which affected the wounds might not have spread through the system, he said that it was possible and might have done so in the seven weeks following when he did not see him. The abrasions were about 1¼ to 1¾ inches in diameter. The septic condition had not cleared up when he let him go; if he had noted that the sepsis was any more than local during the first

two weeks it would have required prompt treatment. Subacute poisoning would be absorbed slowly. Acute septic poisoning overwhelms the system, producing fever, swollen glands and very severe illness; the subacute is a slow invasion of the system by the poison germs, not enough to produce acute symptoms, but manifests itself by a general failing of the system. To connect such a condition with an initial sepsis, in an abstract case, he explained that if a patient is failing and the system is dropping below par, and there are any septic foci in the body, it can be attributed to the absorption of the foci. If the wounds healed *absolutely* and the system was perfectly normal there would be no subacute infection, unless the system had absorbed some of that poison before the wound was healed; it would not after healing, but it might before. If the poison is absorbed enough to affect the system it drops below par; there would be loss of strength; the heart might increase in rapidity and might lose some of its force; there might be a little temperature. That would be septic poisoning, if those symptoms could be traced to a septic condition. With the history of an accident and of good health up to the time of an injury, and of failing health from that time, it might be traced as cause and effect. If there was perfect healing of the wound the germs would all be dead, but sometimes a scab will form over and may contain germs underneath. In subacute sepsis the local symptoms would not be marked, but the symptoms in an acute septic condition would show in twenty-four hours.

Q. He did not have an acute septic condition because his resistance was good enough to throw it back? A. Yes.

Q. That same sort of resistance would work against the subacute? A. Yes.

Q. Suppose that infection was an infection of the bone, would that take longer than the ordinary infection? A. Yes.

Q. Much slower in showing up? A. The subacute condition, yes.

Q. The cardinal symptoms would not show up so quickly in a subacute condition of the bone? A. No.

Q. If that was a tubercular germ developing would it take a longer time than an ordinary germ? A. It would.

Q. The tubercular germ might have developed in the shin injury in this case? A. Possibly, yes.

The doctor stated that he had made daily visits during his treatment. At the end of the two weeks the wounds had healed over; the circumference had narrowed down to probably half an inch in the center. On the last visit he had used an antiseptic dressing on the wound. It required further treatment, but the employee was to do it himself to save expense, and the doctor told him to send for him if necessary. The patient thought he could do it himself, and the fact that he told him that did not mean that he threw him over. It was his understanding of the law that the employee was entitled to attention after two weeks by the insurer.

Dr. Charles B. Sullivan testified that he had known the employee for about five years, and that he saw him on Dec. 6, 1914, when he got the story of an accident about twelve weeks before, and that he had been in bed some two or three weeks, had not worked for about eight weeks after the injury and then worked for three weeks. When the doctor saw him he had been in bed about ten days and complained of loss of appetite, feeling faint, of vomiting several times, and he had some cough; that was all in the way of general symptoms. Physical examination showed nothing except a suspicion of some involvement of the apex of the right lung, which made him suspect some bronchial or tubercular condition. He believed he told the employee and his wife at the time that, as near as he could make out, the condition was a state of exhaustion. His treatment consisted of something for the cough, a general tonic, and he recommended plenty of fresh air, rest and food at the first visit. The employee had a little temperature, 1 degree above normal. He did not see him again for three days; his temperature was about normal and he said he felt a little better. The blood pressure was lower than he would have expected to find in a man of his general make-up. He saw him again on the 14th; his temperature was 2 degrees above normal, and he complained of feeling "all gone." At that time the doctor had made no definite diagnosis, but on account of the temperature, all-gone feeling, general ache and slow pulse he suspected a typhoid condition. He took the blood and had it examined by the board of health; the sputum was examined, which was negative. He saw him about every

second day or so; some days he would feel quite comfortable, other days pretty mean. He was coughing all that time more or less, spitting up some. As time went on, going over his chest, he found modifications from the normal in his breathing. On December 20 the temperature was close to normal, and the next day almost up to 104; he was still coughing; the chest showed evidences of the accumulation of mucus; the next five days he went along about the same. His condition was so uncertain and unsatisfactory that the doctor suggested to the family that it would not be a bad idea for him to go to the hospital to see whether or not they could find out more definitely as to his condition. He referred the employee to the Peter Bent Brigham Hospital, where they took him. Inquiring if it was a tubercular condition, they said they could not tell, but they suspected it; the best diagnosis they could make was some bronchial affection. He went into the hospital on the 26th of December and left on the 15th of January; they had not made a very positive diagnosis, but it was the best they could arrive at. He attended the employee from that time until he died. He coughed a great deal, he had great difficulty in breathing, his lungs filled up with mucus, and he was more or less confused and delirious. When he saw him the first time, on the 12th of December, his wife had told him that a night or two before he had acted in a peculiar way, which at that time the doctor could not account for. He kept on failing. On the 31st of January he developed an infectious condition of the mouth and lips; afterwards he developed bed sores from one position and inability to move around. On February 2 he died. His diagnosis, as signed in the death certificate, was "acute miliary tuberculosis," the best that he could make. Typhoid and tuberculosis were the only things he considered outside of a bronchial condition. He had not thought of a meningeal condition at first, but later, when he saw the confusion and delirium and occasional twitchings, there was no question but there was some meningeal condition. When he made the diagnosis of general exhaustion the employee had looked a little thinner than before.

Miliary tuberculosis is similar to typhoid. In the very beginning of miliary tuberculosis it is practically impossible to make a diagnosis; oftentimes it is not until the post-mortem

examination; it was the most probable diagnosis, the most consistent. He had seen the delirium before he went to the hospital, while in the hospital and afterward. The fever condition was noted on his first visit, the temperature being 99.4; he had an exceedingly slow pulse, and because of the difference in pulse and temperature he was led to suspect a septic typhoid condition. He had talked only in a general way with the deceased about the injury; he got the history that something had fallen on the leg of the employee. Everything was apparently all healed at the time he saw him, and he did not pay any particular attention to that because the other conditions were most prominent and required treatment. He attributed the meningeal complications to whatever was going on in the body, — some general infection setting up an inflammatory condition in the brain.

Q. If there was some septic condition in either of the cuts or abrasions, or both of them, might that cause the meningeal complications that you discovered? A. That is a pretty difficult thing to say; indirectly it might if severe enough.

Q. How severe? A. To cause it immediately it would have to be a pretty general infection.

The blood pressure was extremely low for a man of his age, physical condition and work; that was one of the factors that caused him to make the statement to the wife of the employee, as well as the latter, that whatever the condition was, while he could not give it a name, it was a state of exhaustion. He thought at that time that it might be the result of his accident, as he had not fully regained his usual strength. He would have suspected blood pressure in the normal individual to be higher than his at his age. It was the doctor's opinion that if the injured man went to work before he had fully recovered, and tried to work, using up what little strength he had left, such exhaustion could be attributed to that.

Q. If this man had been doing laborious work a great many years and lost 15 pounds in a period of nine weeks, and during that nine weeks' period was more or less confined, would that be consistent with the condition that you found? A. I think the condition that I found was a little more than I would have expected to find. In the case of a person accustomed to outside work, confinement to the house would take a stronger hold on him than on a person accustomed to remain indoors.

Regarding any affection of the nerves, following such an injury, some individuals would show a great deal; others not any; as he recalled, he had noted nothing to suggest any in the employee; he showed no nervous manifestations. He had sent him to the hospital because he was not sure what the trouble was, and although he felt pretty sure it was some tubercular condition, at the same time it was so vague and indefinite and out of the ordinary in its manifestations, he felt that a conclusion might be arrived at there, and in justice to him, and if there was any chance for him, the employee would get the very best treatment that could be given. With his knowledge of the circumstances in the case the doctor said he "should be inclined to think" that the particular injury, return to work, etc., "had some bearing" on his death, in the way that he had a tubercular focus somewhere in the body. Supposing the diagnosis of acute miliary tuberculosis was correct, he must have had some tubercular focus somewhere in the body, which was lying dormant, and because of the injury his general physical condition was rendered below par, and the resisting power consequently was lowered and gave this focus of infection a chance to get the upper hand and spread, and spread rapidly. If on the 3d of November he had some tenderness in the tarsal-metatarsal joint, it might have meant some inflammatory condition, not necessarily infection; it is not always known what causes an inflammatory condition. Whether it was infection or not, he did not know. The meningeal condition was simply a complication, occurring in the terminal disease; miliary tuberculosis may exist without that condition. The exhaustion was one of the early symptoms. Miliary tuberculosis is a diseased condition in which the various parts of the body are infected with little growths, called tubercules, which consist largely of tubercle bacilli; they occur anywhere and everywhere in the body. From the known beginning of the disease the period to its end is about eight weeks. The doctor had known this disease to follow measles and typhoid fever; there have been other cases in which it occurs without any cause that can be found, — no obvious cause. He had also read of cases which apparently followed some injury; he had personally not had a case before which had a definite history of injury. He saw the

employee on the 6th of December, and it was not until the 18th that he got what he thought were rales; it was not particularly definite. The best authorities claim that an acute miliary tuberculosis can arise without some previous chronic infection. It may arise from some previously existing condition which a person may never have known existed or never had any trouble from. This man was neither frail nor robust; he was a spare man, but he was rounded out. Tuberculosis may be found in an extremely healthy individual. A man working outside all day and every day takes confinement to the house much harder than one accustomed to working indoors; it might have a debilitating effect. If he lost 30 pounds before he died and had a septic condition, it could be attributable to that condition. He was not eating his usual amount of food, and lack of food would have a tendency to produce this condition; there was something working there which deranged his system to such an extent that he did not desire to eat.

Q. Taking this particular man, you are told that he received an injury to his ankle and to his foot, that he had suffered injury, and you do not know of anything else, and you are told about the loss of appetite. Would you claim that it was due to the injury? A. It seems to me it would have some bearing on it.

Q. What would you look for with particular reference to the injury? A. For some complication in the way of sepsis, — infection of some kind.

If he had a tubercular site anywhere in his system, lying dormant, his general physical condition would get down below par, and the resistance to that tubercular condition would be such that it could not prevent it from getting a chance to develop. The doctor had known of tuberculosis of the shin following an accident; whether there had been a dormant infection in this case or not he could not say; it might result in a general sepsis. There are cases of miliary tuberculosis in which no cause can be arrived at; it is a condition of the whole system.

Ivan Stidger read the record of the Peter Bent Brigham Hospital in the case, a copy of which is appended, showing that the employee was admitted Dec. 26, 1914, and gave the history of the accident. He was discharged "against advice"

on Jan. 15, 1915, the patient's family having strongly insisted that he should be brought home, "unimproved," "probable diagnosis of miliary tuberculosis." Reports were made of the results of inoculation of guinea pigs: with the spinal puncture fluid, Jan. 13, 1915, pig killed February 25 showed no evidence of tuberculosis, no tubercle foci, no enlarged glands; with chest fluid, Jan. 18, 1915, pig killed February 24, caseous, enlarged mitto-peritoneal glands, smears in which show tubercular bacilli, many single and conglomerate tubercules over peritoneum, covering abdominal wall and intestines, miliary tuberculosis in liver and spleen; with chest fluid, Jan. 19, 1915, pig killed February 24, no evidence of tuberculosis, no enlarged lymph nodes or tubercules in organs.

A report of examinations of the employee by the accident department of the insurer was submitted in evidence and is appended, showing, in part: "Oct. 19, 1914: scar of a healed abrasion about halfway between heel and toes on outer border of foot. There is some thickening and tenderness at this point. Toes are stiff and he holds foot rigidly when he walks. Motions of ankle o. k. October 26: Much better, but there is a contraction of the calf muscles so that extension of foot is limited. He will need another week. November 2: To go to work and see how it goes. To return if unable to work. November 3: Says he can not work yet; had much pain last night. Spasm of calf muscles has disappeared. Says he will try work Monday, November 9. There is some tenderness at tarso-metatarsal joints still present, but he should be able to work in a few days."

Mrs. Ellen McCarthy, the widow, testified that she had been married nineteen years; that she saw the wounds on the night of the injury and called in Dr. Lockary the next morning. Five or six nights afterwards a lot of black blood came out of the foot; her husband felt it bleeding. She washed and dressed it. There was enough blood to saturate a sheet and blanket, about half a cup full; it was black, as if it came from a bruise. The wounds were not healed when the doctor stopped treating him. Her husband used to take off the bandages every morning and fix it himself. He bathed the foot and put on the stuff the doctor left for him. Her husband did not got to the office of the

insurer until he received a letter which stated that he would not be paid until they saw the foot. He went back to work when they told him to go, about five weeks after the injury. He was confined to the house for three weeks. When he returned to work he was not at all well and could not eat as much as he used to. He seemed to have failed, and said he did not feel able to go to work. He was limping, and the shin cut was not quite healed up. He bathed it every night. He had more pain in the shin bone down near the foot. He remained at work three weeks, during which time he could not eat. The first night after he went to work he could not eat any supper, and ate very little after that. He got very thin and looked ill in the face. Dr. Lockary treated him for a week during this time, giving him a tonic and saying he was run down. He kept taking it, but did not seem to improve; he would have a fever one minute, and the next he would not; then he would get weak spells. They decided to call in Dr. Sullivan, as Dr. Lockary did not seem to be interested, and said he thought he was suffering from the grip; that he did not understand the case and wanted him to have a specialist. She went to the office of the insurer and told them he was ill, but they declined to pay further compensation and sent another doctor who examined him and said he had the grip; this occurred about two weeks after Dr. Sullivan started treating him. Her husband had said to her that he had never felt the same since he got hurt; he had told her about the injury, saying that he fell and the weight of the barrel fell on his legs. He had never been sick a day before. He seemed to be perfectly well and jolly up to the day of the injury. He had an "awful" appetite for a man as thin as he was; after the accident he did not want to eat anything at all. He complained of pain in the shin bone and down below in the foot right along, and she noticed that he was failing. He used to rave and talk to himself at night when he first came home, before he went to the hospital. He said he did not feel so strong to do his work, and said he was so tired that he did not feel like eating anything. When she told the doctor about the black blood he said it was lucky that it did come out. He did not have a cold or cough when he went to work on the 7th of November.

It was November 28 when he gave up work. They said he had the grip then. He had a fever and said he had pains in the bones just before Thanksgiving. He did not have a cough when he gave up work. He said he was sick all over. He did not cough until about a week after Dr. Sullivan was called.

Patrick McCarthy, brother of the deceased, testified concerning the very good health of the large family of brothers and sisters.

Catherine Connors, sister-in-law of the deceased, testified that she had known him for twenty-two years; he had boarded at her house for two years before he married her sister. In visiting her sister she had seen him once a week and sometimes twice. She saw him two weeks before he was injured, and about five days afterwards, and very frequently up to the time of his death. She always thought of him as a pretty strong man; she never heard of his being sick or having a doctor; he was always well. When telling her about the accident he had said that he was afraid he had hurt his chest, for he warded off the barrel with his two hands. He had had accidents, but never any fevers or sickness to her knowledge. He was thin, but he was strong. In the two years he was at her house she had never seen him drink. He may have taken a glass of beer, or two or three, but she had not seen it; she had not noticed any signs of drinking.

William Edward Ward, secretary of the Brewery Workers' Union, testified that he knew the deceased for about thirteen years, having worked with him for about eleven years at the Highland Spring Brewery. He used to see him almost every day. After he, Ward, became secretary he used to see him every day, as he was on the route where his office was located; he came back and forth, twice a day. He knew the deceased to have been a very active, nimble man. He was not stout, but rugged looking, and was as able as any one around in handling the business. He had some pretty hard places at which to deliver goods; at some places the goods had to be hoisted in by pulleys. He saw him the day after he went back to work after his injury; he was delivering goods at Roxbury Crossing; he seemed very feeble at that time; he had asked him about it, and he said he was not well but that he

would "brave it off;" he looked thin and was not as nimble and spry as he used to be. He had occasion to visit his house ten days before he died, but the employee did not know him. Up to the time of the injury he had appeared the same to him as during the thirteen years he knew him; he worked regularly. He had been nicknamed "Spare Ribs." He had never seen him the worse for drink in all the time he knew him; he knew he drank some. He had never seen him drink whiskey, and he thought he would know it if he was a heavy drinker.

Dr. Timothy J. Murphy testified that miliary tuberculosis is not a common disease. At the request of the attorney for the widow he had gone over the reports of the Peter Bent Brigham Hospital and the accident department of the association and some of the testimony of Dr. Lockary and Dr. Sullivan in this case, and it was his opinion that death resulted from acute general miliary tuberculosis. The hospital report probably gives the best data in connection with the man's history and the accident and the condition following the accident, and from that history he judged that the man ran a typical course of acute miliary tuberculosis. The disease usually runs from six to twelve weeks; it was within that period that this illness was all confined, from the start until he died.

Q. How does tuberculosis get into this miliary stage — get started? A. It must have resulted from some shock to the system.

According to the history of the case there was trauma along in September, when the barrel fell on his foot and leg, producing some contusions in the muscles of the foot. There was a hemorrhage in the tissues of the foot, and blood broke down, forming pus, a grumous mass that was discharged through the opening in the foot. He thought that discharge kept up for some little time, indicating that there was a septic condition going on. Subsequently to that the man evidently was not doing well; there was pus absorption somewhere, or a toxin or poison. That followed along until such time as the real typical incipient symptoms of tuberculosis started, about ten or twelve weeks after the accident, when he complained of chill, soreness

and muscular pain. From that time on the disease was pretty well marked. It was clearly shown from the history, while at home and in the hospital, that there was progressive waste, emaciation and loss of strength, and death ensued. As a consequence of the accident there was absorption of poison from the wound and a lowering of resistance; in other words, the man was not in a condition to fight the ordinary diseases that flesh is heir to, evidently on account of a previous infection of tuberculosis which must have been in early life, although no history of it appears in the case except from the physical examination of the Peter Bent Brigham Hospital, showing there must have been an infection some years ago. An autopsy probably would disclose scar tissue. In consequence of the lowering of resistance he had a breaking down of the scar tissue, and the bacteria of tuberculosis which were imprisoned there over a long period of years were let loose in the blood and invaded every organ of the body and produced this general miliary tuberculosis. That is the usual course and cause of the disease. The healed scar he thought was up in the right apex of the lung. Any physical shock causes lowered resistance. Taking this particular history he thought such a physical shock was an adequate cause for the disease which followed. It was not strange that the sputum tests were negative; one very seldom gets a positive sputum test in general miliary tuberculosis until almost the last day; you may get it throughout the disease, in the fossæ or the urine, and it may be discovered in the blood and through the Von Pirquet test. Being questioned as to the bathing of the foot by the deceased for twelve or thirteen weeks after the injury, he said he supposed he did it as any patient would, feeling that it gave some relief. As to whether there was any necessity for it he said there was an abrasion healed over, and from the history of the case he did not see anything which demanded such a necessity.

Q. Do you think the septic condition of his foot, or the lower part of the leg, the tarsal-metatarsal region, had anything to do with his subsequent illness? A. I think it did.

Q. In what respect? A. It lowered his resistance; he was failing all the time; the previous tubercular infection reopened, lighted up and started a new process.

He thought that the patient's return to the same kind of laborious work about nine weeks after the injury, and while he was limping, helped to lower his resistance to quite a little extent; it accelerated the disease.

Being referred to the evidence which showed that the employee was "all in" at the close of each day's work, the doctor said that there is no one symptom that leads the physician who studies tuberculosis to the point more quickly than the fact that a patient complains of feeling tired. It is one of the first symptoms that shows up in every case of tuberculosis, before one gets even to the hemorrhage, positive sputum or anything else.

Q. Then the way you connect this miliary tuberculosis with that injury is through the breaking down of resistance? A. Not that alone; there must have been a tubercular infection a long time previous to that, when the bacteria were thereby introduced into the system, but unassociated with any breaking down of resistance. A man who already has had a tubercular infection is very apt to be affected by any breaking down.

Q. There was a breaking down of the resistance flowing from that injury to the foot? A. It was one of the causes.

Q. Is there any other cause? A. Over-anxiety, any physical shock; either will light up an old tubercular infection.

Q. Then let us get them all down. You feel that the shock here was an adequate cause to light up the tuberculosis into miliary tuberculosis? Do you testify to that? A. I am satisfied as to that.

Q. Apart from the breaking down of resistance, the shock itself? A. I said no such thing, sir.

Q. I want to find out how you are working this out. I asked you first if you worked it out along the line that the injury had impaired the man's resistance? A. That is the first step.

Q. To the inroads of this tubercular germ? You say yes to that? A. Yes.

Q. You say, further, that the shock was an adequate cause, I understand? A. That was shock.

Mr. Parks. Ask him right — if that would in itself be adequate cause? A. I should say it was an adequate cause; he had sepsis of the foot.

Mr. Parks. He is separating those various things. Then the shock itself without the sepsis would be an adequate cause — could start up this miliary tuberculosis? A. That would be impossible to say. It would vary with different people.

Being referred to his statement that shock was part of the thing that lowered resistance, he said shock does not stop so

quickly as it seems to be understood. The falling of the barrel, the stoppage of the barrel by the foot, does not stop the consequence of the shock. The matter ran on for weeks and weeks; the shock itself is just the beginning, it is not the end. You cannot separate the shock from the symptoms that follow; they cannot be separated.

Mr. PARKS. Give us the symptoms that follow the shock; just what effect it has at that particular moment. A It is what follows.

Mr. CRONIN. I want the relation the shock has, as such, to the injury. A. If we take the shock in a general sense, that shock involving everything that follows the injury, I will say it did cause the miliary tuberculosis.

Q. You say shock in a general sense, shock and everything that follows — tell us what you mean in this case. A. The falling of the barrel, the abrasion of the shin, contusion of the tissues, followed by a septic condition of the foot; afterwards, contusion of the muscles of the foot, followed by absorption of pus organisms or toxins in consequence of that. Absorption of this lowered the man's resistance. His strength was lowered and put the system in such a condition that the scar tissue was broken down, and then followed the invading of every organ with the bacteria of tuberculosis; that is all shock.

Q. You use the word shock as synonymous with trauma? It includes abrasion and everything else? A. Trauma does not mean shock at all.

Q. Does shock commonly mean abrasion? A. There are abrasions that may produce shock.

Q. Does shock generally include abrasions? A. If a man happens to have an abrasion, he might get quite a shock.

Shock includes everything connected with the accident. The whole thing is one act, trauma and shock combined; you cannot separate the two. Being asked if the blow and its consequence, apart from the sepsis, would be an adequate cause of setting up the miliary tuberculosis, the doctor said, "Leaving out the pus sepsis it might not;" he would not say that would cause acute miliary tuberculosis. The initial evidence of sepsis is the breaking down. There was undoubtedly sepsis there.

Miliary tuberculosis is always fatal, the result of a tubercular germ getting into the blood current and spreading over the system. The general miliary condition runs anywhere from six to twelve weeks; that is the usual thing; some authorities say not more than six weeks, but it had not been his experience; it has run as long as twelve weeks from the beginning of the

symptoms. Any infection where the system absorbs poisons is apt to lower resistance; if resistance is lowered enough, and if there has been previous tubercular infection, there is very apt to be breaking down, irrespective of what is the cause. He did not think that the presence of alcohol figures very much in the question of tuberculosis; it does not make a big difference in the general run. It is a question of throwing off the effects, which a brewery worker might be able to do better than the man in the office. It has been his experience to find quite frequently cases of tuberculosis that have been lighted up by some accident or shock, sometimes through the taking of an anæsthetic; they are not so common as the pulmonary type.

John H. L. Noyes, the death record clerk, was asked to submit the death certificate in the case. Date of death was Feb. 3, 1915. It showed that the employee was attended from Dec. 6, 1914, to Feb. 3, 1915. Cause of death, acute miliary tuberculosis. Signed, Charles B. Sullivan, M.D.

Edward J. Croak, a shipper, testified that he had charge of McCarthy and his work. On the day of the accident he heard the employee say he had had an accident, and he looked up and saw him sitting on a box with his shoe off. He went and looked at his foot. It was between 4.30 and 5 o'clock. He saw a bruise on the instep and a scrape on his shin. He wanted him to see the accident doctor, but the employee said he would rather go home. He remained away from work for six or seven weeks. In that interval he saw him only once in the evening on the street; he did not stop to speak with him. He saw him when he came back to work. He was assigned to the same work he had previously done, with Mr. Dolan. He did not notice anything out of the way with his work from his place in the office. McCarthy was a tall, thin man, one who drank a fair amount, but always "carried it." He had not lost any time from sickness while working under him; he had had a number of accidents, which would keep him out a week or ten days. He was a good strong man, but not husky; he was always able to attend to his work. He did not notice any change in the employee when he returned to work. He had to handle hogsheads weighing 720 pounds, and barrels weighing 380 or 400 pounds. He had been working for him twelve years.

The office was about 80 or 90 feet from the platform where the men worked. He saw the employee about five, ten or fifteen minutes each day; at these times he was handling empties, — just throwing them off the team. He worked about three weeks after he came back.

Dr. Edward O. Otis, an expert on pulmonary diseases, testified that he examined the records of the Peter Bent Brigham Hospital and the record of the testimony of Dr. Charles B. Sullivan in this case, and from those records and the history of the case while at the hospital and Dr. Sullivan's treatment, the probable diagnosis would appear to him to have been tuberculosis, — what we call general miliary tuberculosis, which was the cause of his death. Referring to the guinea-pig tests, he said the evidence was somewhat conflicting, so far as the record goes, one positive and the other two negative; but if after inoculation with the spinal puncture fluid the guinea pig showed tubercular bacteria, it would be a most positive evidence that the man died of miliary tuberculosis, which is, in his opinion, what caused the employee's death. Miliary tuberculosis is a general eruption or growth of miliary tubercules, — small tubercules in various organs of the body, secondary always, he believed, to some previous tubercular focus or spot of old tuberculosis, either latent or active in the body somewhere. From that focus or spot, for some reason or other, the tubercular bacteria are set free and get into the blood stream. The blood, extending in all directions, carries the bacteria to all parts of the body; that produces this general miliary tuberculosis. It is not a destruction of the lungs, but a growth of these small particles or tubercles in various organs of the body. The tubercular bacteria gain entrance into the blood stream in many ways. There may be a gland somewhere in the body which may have previously been the depository of some tubercular bacteria, and for some reason or other that gland may break down, as we say, and those tubercular bacteria from that gland may get into the blood stream. It may be, for instance, a tuberculosis of the joint in a child; it may be operated upon, and from that operation tubercular bacteria may get into the blood. There are many different ways. Wherever there happens to be a focus or spot of tuber-

culosis, it is possible that may get into the blood stream. We have large numbers of people suffering from tuberculosis, and why that does not happen more frequently we do not know. There are 350 cases in the sanitarium, yet it is rarely that miliary tuberculosis appears. We would expect it to occur more frequently because we have the focus of tuberculosis from which it might get into the blood stream, but it does not occur. With 350 patients he did not remember a single case of acute miliary tuberculosis. At all events, it is a rare thing.

Being asked what is the ordinary course of the disease from the time the germ enters the blood supply until the time of death, he said the time is from a few hours to six or eight weeks; cases have been known to die within a few hours, within a week, and so on within six or eight weeks. It is an acute disease, advancing rapidly, with symptoms similar to other infectious diseases, particularly typhoid fever. The patient seems a great deal sicker than the ordinary patient suffering from bronchitis. Being asked the common cause of this disease, he repeated that it is caused by tubercular bacteria getting into the blood stream and being carried to the organs of the body. It is an infectious disease like the ordinary cases of tuberculosis, resulting from getting tubercular bacteria into the system from somebody else at some time in one's life.

Being referred to the fact that the only evidence of any focus of tubercular bacteria in this case was in the apex of the right lung, he was asked how, assuming this to be the seat of infection, would an infection causing acute miliary tuberculosis start from that focus. He said from that focus it might become connected with some blood vessel; from that focus active tubercular bacteria can readily get into the blood stream and be carried through different parts of the body. Being asked what could cause the tubercular bacteria in that focus to get into the blood stream, the doctor said, "Simply because of a breakdown, — if it was a gland, the breaking down of a gland or some part of that focus, and its contiguity to a blood vessel, permitting from that focus the bacteria to get into the blood vessel; the blood traverses the whole body carrying them to the different organs."

Q. What would cause the breaking down there, which would be essential to getting that into the blood stream? A. Some active process of the disease, or some breaking out of the focus for some reason or other.

Such a disease has been known to light up without any injury, without any physical violence, even, to a person who has already some tubercular foci. None of the cases he happened to recall had any accident. If a person had infection of any kind he would say, in general, when the resisting power of the body is lessened that infection is more inclined to be active; for instance, a man has in his upper respiratory tract more or less the germs of pneumonia; he does not have pneumonia except when he lowers his resistance, then they become active. It is more or less a vague term, — the matter of resistance. He would say when a man contracts a disease his resistance is lowered; exactly what is meant by that we do not know. In his experience, persons who are habitual drinkers have shown less resistance to active tuberculosis than others; it might possibly lower vitality, but he did not believe that had very much to do with the general condition of the man; it is a temporary thing.

Q. Taking the wound, as has been described, to the right foot just forward of the ankle, in the nature of an abrasion about 2 inches in length, 1¼ wide, and a wound below the right shin, all the wounds had some local sepsis at the outset, but which wounds had healed over by October 19 when seen by our doctor, and which wounds had so completely healed that in the hospital the day after Christmas no scars were found on the extremities at all and the contusion had disappeared, so far as any physical evidence showed; it was not apparent before the man resumed work in November, do you feel that, from the fact that there was some local sepsis at one time in the wound, although there were no after symptoms of general sepsis, such as swelling in the groin or tenderness or rising temperature until he was found to be in the hospital affected with this disease, do you feel from that it can fairly be said that that sepsis spread into the system some toxic agent which impaired the system to such an extent as to cause this disease to light up? A. I cannot see that it had any definite influence upon the subsequent tuberculosis. The wound healed up, and subsequently he developed tuberculosis. I do not see any definite connection of cause and effect between the wound and the subsequent tuberculosis and the suppuration that followed the wound. I understand that he was not laid up a long time with a large suppurating wound, a superficial wound, a large discharging abscess or anything of that sort.

The doctor was informed that the evidence of Dr. Lockary was that a septic condition had set in on the shin injury, and that it was healing when he left it; that the evidence of Mrs. McCarthy and her sister is that the injury to the lower extremity, the tarsa-metatarsal joint, burst a few days after the injury and almost a cup of black-looking blood came from it, and that it was necessary to change cloths and put on temporary bandages until Dr. Lockary came. A part of Dr. Lockary's evidence was read to him, and it was shown that Dr. Lockary had conceded that the high temperature and sweating found in the hospital might be merely the symptoms of his disease rather than a general sepsis; that it would not necessarily indicate that.

Q. From that evidence, Doctor, do you feel that you can fairly work out a sepsis proceeding from this injury as the upsetting factor in this disease? A. The report said that it was an abrasion. An abrasion is a superficial wound, and as it suppurated, apparently it was not deep or severe; therefore I take it that this sepsis was a local thing confined to the seat of the injury. If it had been a general sepsis, then the man would have had, following the suppuration at the seat of the injury, and sometimes quite directly following, a blood poisoning, which would have affected his whole system and made him very sick. But that he should have had a blood poisoning so late after the accident, having in the meantime returned to work and been more or less comparatively well, it seems to me unlikely and not consonant with all the evidence that is pretty direct, and that the case was one of miliary tuberculosis rather than one of septicemia. We have no absolute proof unless it is a fact that that fluid did infect the system.

Q. It is not claimed that the man died of septicemia, but they say there was something akin to septicemia which had the intermediary effect of lowering resistance to the point that tubercular bacteria could get in their work; that is the way they have worked it out. A. From the history of the case it seems to me that the amount of sepsis from that abrasion was local and superficial and not general, and had no direct bearing upon the subsequent fatal illness.

Q. About the contusion of the calf muscles, which limited the extension of his foot and which was the real incapacitating feature in this thing up to November 7, as appears on the records, would such a contusion of the calf muscles cause miliary tuberculosis to light up through the shock of a blow causing such a contusion? A. I see no connection between the two.

Q. Would you not expect, or would you expect, the shock of a contusion of the foot would produce immediately rupture of the lung fabric so that the tubercular bacteria would get into the blood stream? You

would not expect to find any direct connection? A. I do not see any direct connection.

Q. That type of shock and that type of result? A. I do not see any. The man had tubercular bacteria which at this date infected his whole system. What precipitated the breaking out of the tubercular bacteria at that special time, what was the predisposing cause, is a matter of conjecture. If the man had no accident, that might have been coming on just the same and happened just the same. . . . It is a conjecture to know what is the predisposing cause. . . . Always bear in mind that one cannot have tuberculosis without getting germs in them; germs are the cause of the disease.

Being asked to assume a possible strain to the chest or lung tissue in the warding off of the barrel, the doctor said he did not know whether he complained of anything or not, but if there was any amount of strain or injury he must have complained of it. He would not have looked for such a strain from the accident as described unless there was some complaint or attention drawn to it.

If there had been a superficial healing and still a septic condition underneath there would be local evidence, — swelling and pain, evidence of deep suppuration, general systematic symptoms like fever or chill, or something of that sort.

Q. Is not chill and fever evidenced in this particular case? A. Yes, but it was a number of weeks, as I remember it, subsequent to any direct open injury, — subsequent to the healing of the injury.

Q. Suppose I told you that there is evidence in the case that this man was bathing his foot twelve weeks, — bathing the shin for pain twelve weeks after the injury, or about twelve weeks, — then what would you say about this septic condition underneath? A. I do not think the fact that he was bathing his foot would go for or against a sepsis. I would want more evidence than that.

Q. You said there would be some evidence of it, some swelling, some pain. Assuming that this man did have a pain? A. I said constitutional disturbances, like fever and chill, perhaps.

Q. You understand that this man died the 2d of February, seventeen or eighteen weeks following the injury; bringing you up to the twelfth week when he was bathing his shin with some preparation because his foot was paining, would that lead you to believe that a septic condition was going on underneath, or some absorption underneath? A. I could not tell without a more careful examination or other evidence.

Mr. Parks. I would like to have you assume that there was actual pain, and that there was actual necessity for it. I want to get your idea if there was a necessity for bathing it. A. I have no doubt the man thought

he could improve his pain by bathing his foot. Pain is evidence of some suppuration going on, but it is not enough, without other symptoms, to say there was suppuration there.

Q. It might be evidence of something else besides suppuration? A. It might be a symptom of periostitis, of inflammation of the covering of the bone, resulting from the accident, and become normal again, without any other evidence of suppuration or sepsis.

Q. Suppose this pain was accompanied by a delirium, loss of appetite, limping and a general fever?

Mr. CRONIN. Just a moment; you mean that all those things were coincident? A. Yes.

Mr. CRONIN. I do not believe there is any evidence of that kind.

Mr. KILLION. His wife testified to the delirium. He went back to work limping. I am saying that at the time he went to work he went to work limping; he did not have any appetite; and when he came home at night he went to bed immediately.

Mr. CRONIN. Delirium?

Mr. KILLION. His wife said he talked in his sleep.

Mr. CRONIN. After November 28, when he gave up work, was when the first delirium was.

Mr. KILLION. We have this, — a man suffering pain from a wound in the shin; he has lost his appetite; has lost a lot of weight up to this time, as has been testified to; has lost his strength and wants to go to bed immediately upon coming from work; what do you say about the septic condition?

Q. Did he have a fever? A. He had some fever.

Q. Did he have a chill at that time? A. I do not understand about a chill; there is no history of it. I do not know that he did. His wife testified that he did.

Mr. CRONIN. This was after November 28. A. Granting those symptoms that the man had fever, delirium and pain in his leg, he had some systematic or constitutional acute disease. I would have to make a very careful examination to find out what it is.

Q. Assuming we have a man, up to the 14th of September, who, aside from a few slight accidents that go with his work, which did not lay him up for over a week at the most in twelve years, and did not lose any time whatever, a man who is about in his normal condition on the 14th of September, a strong, nimble man, lifting these weights aggregating 700 pounds, with assistance of the helper, Dolan the driver, did his work all right on September 14; we find that man returning to work November 9, after being laid up all this time with the injury which is called superficial; we find that he went back to work limping; that he worked only three weeks; would you say, then, Doctor, that any other cause than this injury caused his death, — caused his subsequent illness from which he died? A. Yes, there is the evidence that he died of miliary tuberculosis. Injury cannot cause miliary tuberculosis.

Q. Would you say that the injury that he received and the subsequent lying off from his work, and the returning to work when he was limping had any effect upon his death — causing his death? A. I think you are coming to the direct point. I think there is a possibility that the subsequent disturbance of his mode of life and his enforced confinement might have lowered his resistance. I cannot say anything more than that; it is a conjecture. He might have had all this sequence of events without the injury, but it is possible, not that the suppuration had anything to do with it, but the enforced idleness and disturbance of ordinary habits of life and lying up might have lowered his vitality and his resistance; that may have been the predisposing cause. This is a mere matter of conjecture. You cannot have tuberculosis without the tubercular bacteria in you; accident does not put it in you. It might have been coincident. You can have a blood poisoning from a local sepsis, but the symptoms of the blood poisoning are very marked. There are a large number of local wounds and many of them may suppurate, but never more than local; yet you can have poisoning from a pin prick.

Q. When you say that the cases you came in contact with never had any injury, what do you mean in relation to an injury? It is not claimed in this case that this blow of the barrel caused acute tuberculosis, but that it lowered the man's resistance, in that the tubercular germs got in their work to cause the miliary tuberculosis. A. This is all I meant when I said there never was an injury: there was nothing to cause the supposed lowering of resistance in any of the cases. There is a question as to what lowers resistance, what will lower one man's resistance will not lower another's.

Q. If this man's resistance was actually lowered, if the evidence shows that, do you say that acute miliary tuberculosis might have been set up by that lowering of resistance? A. The increased lowering of resistance by the accident?

Q. If the evidence shows it? A. It might have been the attendant straw; it might have added still more to the lowering of resistance, but the miliary tuberculosis may have been coincident.

Q. When a wound that has been septic heals up, is that always evidence that all effects of that septic condition have gone from the body? A. It is, unless you have got general symptoms of a blood poisoning; if there are no symptoms and the man is well.

Q. Is it possible for a man to have anything in his body, if that wound is all healed over? A. No.

Q. If you are sure that it is healed over? A. No.

Q. You say that the subsequent developments of this injury had no direct bearing — the injury had no direct bearing on the subsequent development? A. Yes.

Q. Did it have any indirect bearing? A. Well, as I said, there is a possibility that that might have added to the lowering of his resistance, and therefore I say there was possibility it might have an indirect bearing.

Mr. CRONIN. That is, Doctor, that pain which he complained of in the calf muscle, some muscle spasm which was causing that pain, that might cause the man pain, might it not? A. That might give cramp, — cause him pain.

Q. That might actually account for any pain which he had. Now this other thing. Suppose that the man during the year prior to the accident had been noticed to have fallen off in weight, — noticeable, say, to the extent of about 10 pounds, — a man weighing 155 or 160, somewhere around there, would that falling off in weight have any bearing on your opinion as to whether this sprung from natural causes or whether his vitality was being lowered generally over a long period? A. If his habits had been as usual, he had eaten as usual, he had not dissipated, his general habits of life had been as usual, there must have been some cause why he should have lost flesh, and that would have had to be investigated.

Q. And that cause would be one that would normally predispose him to this type of infection? A. You would think some chronic influence or infection was at work in his system that you would investigate.

Dr. Benjamin Ernest Sibley testified as follows: —

Mr. CRONIN. What is your name, Doctor? A. Benjamin Ernest Sibley.

Q. At this point I want to put into evidence the letter in consequence of which this man came to our hospital in connection with Dr. Sullivan. On Oct. 15, 1914, there was a letter written. [Letter read.] On October 19, Doctor, did this man come to the hospital for examination. A. He did.

Q. Did you examine him at that time? A. I did.

Q. What condition did you find? A. At that time he complained only of his foot, and described the accident to me and responded to questions as to how he was hurt. I found then simply a scar on the outer edge of the foot about one-half way between the toes and the heel. There was some tenderness at that point; ankle motion was all right, but when he walked he held his foot rigidly, as I took it, to give the most protection to the tender spot. My advice was to use the foot freely and come back in a week, — to get it limbered up and accustomed to walking.

Q. Any signs of sepsis in that foot then? A. Not that I could determine.

Q. Did you see him when he came back in a week? A. Yes. I saw him on October 26 again.

Q. And what did you find then? A. He was much better, but there was a contraction of the calf muscles so that when I tried to bring the foot up in that way I could not fully bring it up, and I took it to come from the faulty position in which he walked to favor the tender part of the foot, because I had not found that at the first examination. At that time I said he would need another week.

Q. What did you recommend him to do, — anything for that? A. I told him to use his foot and get accustomed to walking; to get the muscles limbered up and accustomed to use. I find trouble frequently from disuse.

Q. Did you see him the next time he came in? A. No, November 2 is not in my writing. I judge it is Dr. Morse's writing.

Q. When did you see the man next? A. November 3 was the third time I saw him, the last time at the hospital.

Q. Between that time and the 26th Dr. Morse had seen him? A. On November 2.

Q. On November 3 what happened? A. He said he could not walk yet, had pain last night in the foot. He had not complained of the leg to me, but my note is "spasm of the calf muscles had disappeared; says he will try to work Monday, November 9. There is some tenderness at the tarso-metatarsal joints still present, but he should be able to work in a few days."

Q. In fact, he did resume work a few days before the 9th, — on the 7th, Doctor? You went to examine that man some time later? A. Yes, I was asked by the office to go and see him at his home; no reason was given why. I supposed it was the foot accident. When I went in, I said "Hello, how is your foot?" He said, "My foot is all right, but I am sick."

Mr. KILLION. I did not get the date of that; when was that, Doctor? A. I saw him on December 16 at his home. "Foot is now all right, not tender, not swollen; man is pale, has a cough. Examination of lungs shows hoarse respiration and numerous scattered rales, heart sounds are normal, pulse rate 112, temperature 101 6–10," and my note written to the company as a conclusion was, "The man is suffering from bronchitis, and I can see no connection between his accident and his present disability." The history he gave me was what is given here, — that he had been to work about three weeks, then given up.

Mr. CRONIN. Now, Doctor, you have been here and heard the history of the injury; you were here when I set forth the history of the injury to Dr. Otis; you were here during the whole testimony; now, taking the picture of the injury given and the symptoms described, that long question to Dr. Otis, do you feel, Doctor, that the sepsis here caused or lighted up tubercular bacteria into this condition of acute miliary tuberculosis? A. So far as I can judge, from what I saw, from what I judge of the nature of the injury as I did see it, it did not seem to me severe enough to be a factor in the case.

Q. Was there at any time that you saw the case, was there anything there that led you to believe there was any septic condition continuing? A. There were never any signs of sepsis the times I saw him.

Q. Would the contusion of the foot or the pain of that spasm in the thigh or tendons in the foot, would those things cause a breaking down in the tissues in the right apex of the lungs? A. I should not expect them to do so.

Q. In order to have this caused you have got to have the tubercular

bacillus there somewhere, that would not come in through the wound that way, one of the germs present in the system all the time; if it did come in through the wounds there would be some signs? A. There was never any appearance of local tuberculosis, tuberculous lesion where he was injured.

Q. To get the disease one has to have that tubercular germ in this case in the lungs, the right lung at the top, plus a so-called lowering of resistance, have you not, Doctor? That is, the opposition to the work of this germ has got to relax or the work of the germ itself has got to increase so the gland is destroyed? A. Yes.

Q. And it is generally spoken of as lowering of resistance, is it not? A. It is.

Q. Now can you see either in the amount and kind of sepsis described, or in the shock of the blow itself, any adequate cause for such lowering of resistance as to set up this miliary tuberculosis that appeared there around the 1st of December? A. I should not expect it to.

Q. I believe that Mrs. McCarthy, the wife of the deceased, in her testimony said that when Dr. Lockary was called in some time around the 1st of December, just about when the man got through work, that they thought at first that he had the grip; now can that, Doctor, proceed from just what we call catching a cold? A. Well, it is pretty hard to know what they mean by grip. Most people, if they have a cold and have aches and pains, speak of it as grip.

Q. The wife said that Dr. Lockary thought it was the grip. Dr. Sullivan, when he came in that day, — he is the first one that treated the man, — Dr. Sullivan described the condition as bronchitic in character at first; well, now, would that bronchitis come from what we term a cold, sometimes a mere catching cold? A. Yes, that is the common way of causing bronchitis.

Q. If you get cold, is catching a cold one of the ways of spurring tubercular germs into fire activity? A. Yes.

Q. And even though the resistance may remain the same, if the germs become more active they might break the individual down, is that so, Doctor? A. That is possible, yes.

Q. On the other hand, miliary tuberculosis at the start has often a sort of bronchitic appearance, has it not? A. It may manifest itself that way, yes.

Q. And sometimes resembles typhoid? A. Yes, in some of its general symptoms, I suppose.

Q. Now, Doctor, assuming this was a man who under statement of the hospital drank eight or ten beers a day and two or three whiskeys, do you feel —

Mr. Parks. Six, I think.

Mr. Cronin. Six or eight glasses of beer and two or three glasses of whiskey and ale, now assuming that he was a daily drinker of that type, do you feel that such drinking plays any part in the lowering of resistance to this germ? A. I think it does, because drinkers are very subject to pneu-

monia; they are the fellows that drop down on a hot day, give evidence of lowered resistance; it does not touch the fellow who does not drink.

Q. This pneumonia, like this acute miliary tuberculosis, is one of these lowered resistance things? A. We all of us carry most of the time, probably, the germs that cause pneumonia in the nose; perhaps they do not touch us unless for some reason our resistance is lowered.

Q. It is the drinker that gets it? A. Particularly subject to it.

Q. And similarly with this, a great many of us have some focus, some tubercular focus within us that is pretty well bottled up until that resisting envelope is shattered in some way? A. Autopsy shows that a great many people who died of something else, and never knew they had tuberculosis, have a healed lesion in the lung.

Q. Assuming this man, during the year next preceding the accident, had declined the way noticed, the amount estimated at about 10 pounds, would you say that there was or was not any evidence that the man was gradually declining and becoming a more likely subject for this sort of thing before the accident? A. Well, you would have to answer that by saying that a doctor would investigate pretty closely any loss of weight to determine the cause; loss of weight is due to something, and they always try to determine carefully what it is, because it is apt to mean lowered resistance, sometimes an indication of disease of one kind or another.

Mr. KILLION. You said, Doctor, that you did not figure that this injury was very severe; do you not consider an injury that lasts nine weeks severe? A. Well, you have got to divide the injury into two parts. The thing was healed up when I saw it. My reasons for continuing disability was simply the fact that the man did heavy labor, and my experience has taught me that it is pretty hard to get a man to come back to work because his foot is a little sore. We have always been pretty lenient in giving a man extra time until we felt he could get work, reminding him to use his foot in the meantime. At the time I saw him the only reason for continuing disability was that the foot was still lame; he favored it — did not use it properly.

Q. To what do you attribute the lameness at nine weeks, if it was not severe injury? A. My experience indicates that a blow on the foot that is comparatively trivial will keep the foot tender for a long period of time. I think it is due to a little inflammation on the membrane of the bone, the periosteum; the soreness from bone bruises lasts a long time.

Dr. George W. Morse testified as follows: —

Mr. CRONIN. You are a physician and surgeon in general practice? A. I am.

Q. And you examine free cases at 66 Westland Avenue? A. I do.

Q. The Massachusetts Employees' Accident Department? A. Yes, sir.

Q. Did you see Dennis McCarthy while there? A. I saw him on November 2, according to the records.

Q. And did you examine the foot at that time? A. I did.

Q. In what condition did you find it? A. I have no definite memory of it except from what I get from my notes. According to my notes I found practically nothing wrong with it. I told him to go back to work. If he was unable to work, I told him to come back and see me.

Q. What date was that, November 2? A. To go to work; to see how it goes, and to return if unable to work. I have read the previous history which Dr. Sullivan has given. I examined his foot and found nothing wrong with it. There was no reason why he should not go to work. I simply made note that he should go to work. I remember the foot, in a hazy way, and from having refreshed my memory with this record. I simply could find nothing wrong with him, and no reason why he could not go to work, and advised him to go to work.

Q. Now, Doctor, I assume you have looked over the Peter Bent Brigham Hospital records, have you not? A. I have.

Q. And you had read to you the testimony of Dr. Sullivan? A. I have.

Q. And you have had the description of the injury, which was given by Dr. Lockary, presented to you, namely, that there were two abrasions, one just below the ankle on the right foot and one below the shin, about 1½ inches long and 1 inch wide, and that these became septic and had not entirely healed two weeks afterwards, on the 28th; there was also evidence that from one of the witnesses — the evidence of his wife, not of the doctor — that from one of them there was considerable black blood which came out about five days after the accident. She described it as almost a cupful. Dr. Lockary does not describe that at all. It also appears in Dr. Sibley's evidence that on October 19 there were no signs of local sepsis infection and had been no definite evidence that there was general sepsis, unless you find it in raised temperature and swelling, which occurred about the 1st of December after the man had left work. Now, do you from that, Doctor, see any reason to believe that this man's injury set up a sepsis which lowered his resistance and caused the acute miliary tuberculosis? A. I do not. I do not think it had anything to do with it; that is, I would like to qualify that statement a little bit, if I may. From the evidence of injury that I saw, which was practically nothing, and from what I have learned about the case from the previous history and from the hundreds of cases that I have seen, I honestly do not think that the injury was of sufficient severity to have any effect on this man. I cannot say it did not have any effect at all, but if there was, it was very slight.

Mr. PARKS. You mean the effect upon the miliary tuberculosis? A. My opinion as regards the miliary tuberculosis — he was an alcoholic man; he was a man that had tuberculosis before this happened; he was on the down-hill road and going fast when this happened, and whether this accident would affect his condition or not, I do not believe it had sufficient severity to hasten the end, because he was already on the slide, and judging from the record and history as I saw it, I do not believe it hastened his death at all.

Q. Doctor, what was the condition there as you saw it that caused him to be laid up seven or eight weeks after the accident until the time he returned to work? A. I do not think the average man would be laid up seven or eight weeks with an injury, such as was given to me, such as I learned it to be. The type of man that works with the Rueter Company, and I have taken care of a great many of them, and if they say they are drinking six or eight beers a day they are drinking nigh twenty, are all in very bad condition. When one is hurt he lays off a great deal longer time than anybody else would. The effect of the injury on his system I do not believe would be any different than on anybody else, I mean physically on his system, but they do not get to work so quickly and usually drink more after the injury than before.

Q. Dr. Sibley said he felt some tenderness around the tarso-metatarsal joints and found some sepsis in the muscle of the calf, which he attributed to the foot, and that he kind of favored it to get away from the tenderness; that was his theory of the muscle spasm which he did not find at the earlier time and found later. You did not find muscle spasm on the day you examined him? A. I did not find any objective symptoms. I found subjective symptoms, in that he said his leg was a little lame, stiff. I found no cause for it.

Q. Now, Doctor, you spoke of his being a steady alcoholic, as inclining to this; does alcohol figure in the breaking down of resistance to the tubercular germ? A. It certainly does.

Q. To a large extent? A. A very large extent.

Q. Does it figure more in a man who is a steady drinker than in a man who is an occasional drinker? A. In a steady drinker who never gets drunk.

Q. In your opinion does it figure more in a beer or whiskey drinker? A. That type usually drinks both. It is hard to say, but more, of course, in a man who drinks hard liquor. The whiskey and beer together is simply a step beyond the beer alone.

Q. If you knew that the man was a steady drinker, if you knew he had lost some 10 pounds in weight a year before the accident, would that give you any definite picture of the case — lead you to form any opinion? A. I have a picture of the case already here.

Mr. Parks. The doctor has already pictured it.

Mr. Cronin. How would the shock of an injury to the foot in and of itself, Doctor, cause a breaking down of the tissues in the upper part of the right lung sufficient to set up a miliary tuberculosis? A. Why, in view of the fact that this man, as I remember it, had worked some hours after the injury, the question of shock is of negligible quality. A man with shock cannot continue to do the heavy work that he did, and men of that type cannot stand shock, anyway. If there was any appreciable amount of shock he would have stopped work and been carried to the hospital in an ambulance.

Mr. Killion. What is your experience, Doctor? A. I graduated from

the Harvard Medical School in 1908. I was then surgeon at the Massachusetts General two years, then practiced two years, then resident surgeon at the Massachusetts General two years. Since then I have been in surgery. I am not a specialist on tuberculosis.

Q. You spoke about this man being on the toboggan, going down hill fast; you noticed that yourself? A. That is the mental picture I have.

Q. The only time you saw him was the 2d of November? A. Yes, sir,

Q. Why did you send him to work, Doctor, if he was going down hill fast? A. I see a great many men up there. I examine probably and treat from fifteen to twenty a day; there are a great many of them. I have two or three that have cancer and different other diseases, — cancer of the stomach, cancer of the lip, cirrhosis of the liver, and all those various diseases, going down hill right along, but if one cuts a finger and that finger is healed up, or nearly healed, I tell him to go back to work. That is the basis I sent this man back on; as far as the injury is concerned, he came to me for treatment, and he was perfectly able to work and I advised him to do so.

Q. Was not he limping at the time, Doctor? A. I do not remember that.

Q. As a matter of fact, you do not remember much about it, do you, Doctor? A. Just what little I can remember from this record and from the whole picture of the case as described to me, and the records before and after the injury.

Q. You negative the idea of any sepsis in your previous answer to Mr. Cronin; is it not possible for the injury to have healed up and to have an absorption of toxic poisons inside? A. I do not think so, not from the kind of wound that I assume this was, — an abrasion, which has a chance to heal from the outside.

Q. Can you tell us what your assumption of this wound is? A. It was abrasion and contusion of the foot and ankle.

Q. Do you think that a septic condition set in, in the shin, five days after? A. There is always sepsis in superficial abrasions.

Q. Do you know there was pus coming from one of the injuries? A. There always is from every abrasion. In an open wound sepsis is thrown off as fast as it heals; there is very little absorption.

Q. Supposing it had been told you, Doctor, that the lower wound had burst some five nights after the injury, that would be the 19th of September, and that about a cupful of thick dirty black blood had come forth, then what would you think as to the severity of the injury? A. That is rather difficult to say. I mean, was it a hematoma that broke, a blood blister?

Q. The condition down in the lower part of the foot broke. A. I did not know a cupful came from it at all.

Mr. Cronin. His wife testified that it broke; there was almost a cupful.

Dr. Morse. If there is anything contained in a deep wound like that, there might be and probably would be some absorption.

Q. And if there had been an absorption, would not it lower a man's resistance and debilitate him so, if he had previously existing latent tuberculosis focus in the right apex of the lung — might that happen if he was so much debilitated? A. That would have to be qualified a little. If a man had pus on the leg that was under pressure, and though he was absorbing it for any great length of time, that naturally would lower his resistance, and by lowering his resistance any other infection might, of course, go faster; but if there is a focus, vein or blood tumor, or broken vein or hematoma, that is, a blood vessel breaking under the skin, that breaks and lets that out. If it is blood the absorption of that would not debilitate him; if it was pus, it might do that to a slight extent in five days, but it would take longer than five days to take any serious effect on the health.

Q. Supposing the injury took place on the 14th of September. The only time you saw him was November 2, and he returned to work November 9. Would nine weeks' laying up have any effect on delibitating him? A. Well, what would the man do during the nine weeks that he was laid up?

Q. Absolutely nothing; limp around with a cane, go down to hospital service and stay for half a day. A. If that man had come to me in that condition, without anything wrong with the foot, and told me he was losing weight, and I found that he had probably tuberculosis and alcoholic history, I think that I would tell him to quit work, rest, take good care of himself, and not continue the hard work he was doing. Of course, if a man is laid off for nine weeks he gets soft; he got away from the general road and routine of work which was hard for him when he went back.

Q. Do you think he would debilitate? You say he got soft. You mean by that it lowered his resistance, debilitated him somewhat? A. I cannot say one way or the other, whether it did or not. The reason I preferred that he should work was that work ought to build up a man in that condition.

Q. You mean by getting softened up? A. His arm muscles and back muscles. If an oarsman quits work for two months, one month to two months, the first month he goes back the man would be pretty soft, if his resistance has not necessarily been lowered.

Q. Supposing you were told, Doctor, following his going back to work for three weeks, that each night he came home he was all in, did not care whether he ate his supper or not, and wanted to go to bed; then would you say the nine weeks' lay up would debilitate him? A. I think his tuberculosis and general condition had debilitated him rather than the injury.

Q. Do you find anything on the report there, Doctor, that says the man had tuberculosis? A. No.

Q. Why do you say he had tuberculosis? Did you make any previous diagnosis of tuberculosis? A. No, but if he had tuberculosis at the end, if he died of tuberculosis, as I understand it from the hospital, as I supposed he did, he certainly had tuberculosis for a number of years before that.

Dr. Morse said that the lay-up would make him feel better. The following is a copy of the house record of the Peter Bent Brigham Hospital: —

Dennis C. McCarthy, 108 Marcella St., Roxbury. Age: 43. Occupation: Brewery worker. Diagnosis: Miliary tuberculosis (?) Admitted Dec. 26, 1914, to house.

Complaint. — "Fever and cough."

Family History. — Father died at 72 of old age. Mother living, in her 75th year and well. Three brothers living and well. Two sisters living and well. No brothers or sisters dead. No tuberculosis, cancer, insanity, diabetes or gout in the family. No known exposure to tuberculosis.

Marital. — Married at 24½ years. Wife and six children living and well. One child died at three years of pertussis; one child died of pneumonia at four years. No miscarriages.

Personal History. — He drinks one cup of tea daily. Up to P. I. he was accustomed to 6 to 8 glasses of beer and 2 to 3 glasses of whiskey daily. Has never been intoxicated. Smokes 5 cents worth of plug tobacco a week. Denies gonorrhœa and specific infection by name and all symptoms. No mucous patches in mouth, no skin eruptions, no girdle sensations or shooting pains in legs. No swollen joints.

Occupation. — Works as driver on a brewery wagon delivering barrels of beer. The work is heavy and he averages nine hours a day.

Past History. — He has never had any of the infectious diseases. No measles, mumps, scarlet fever, diphtheria, tonsillitis, chorea, rheumatism, typhoid, malaria, pneumonia or pleurisy. He has always been well up to P. I.

Respiratory. — He has never had a persistent cough, night sweats or sudden loss of weight.

Gastrointestinal. — His digestion has always been good. Never was nauseated or vomited. He has not had "dry heaves." There have been no abdominal pains. Bowels always regular. Never noticed his stools.

Cardiac. — No dyspnœa, cyanosis, palpitation, orthopnœa or œdema.

Genitourinary. — Micturition, 4 to 5 during the day. Nocturia, once. No dysuria or strangury. No hematuria, polydypsia or urgency.

Neuromuscular. — No headache, fits, convulsions, ataxia, failing vision or hearing. No incontinence or retention.

Best Weight. — One hundred and sixty pounds one year ago. Weight one month ago, 145 pounds. Weight now, 130 pounds, — loss of 30 pounds.

Four months ago was injured by a heavy barrel falling on his right ankle. This accident kept him in bed at home for eight weeks, where he was seen by a physician who told him that two small bones in the foot were broken. No X-ray was taken. The skin was broken also, and a discharge kept up for four or five days. No other accidents or operations.

Present Illness. — Five weeks ago, and three weeks after getting out of

bed following the accident, he was wakened from sleep at 2 A.M. with a chill and pains in all his bones and muscles. The chill continued for 5 to 7 minutes, but he does not know whether it was followed by a fever or not. For the following two days he felt weak and had a slight cough, but no sputum. He then gave up work because of weakness and general malaise. For the past four weeks he has been in bed constantly. The cough has persisted and grown worse, at times keeping him awake all night. For almost four weeks he has had irregular chills and fever, coming on about midnight and not accompanied by sweating. The chills usually do not come on every day. Three days ago his physician told him that his temperature was 102 degrees in the afternoon. There has been a considerable amount of whitish yellow sputum, more some days than others. This has never been bloody. The State Board of Health examined it twice and gave a negative report. Blood also examined and reported negative. His weakness has increased, until he entered the hospital on advice of his physician.

Physical Examination. — The patient is a well-developed and nourished man of middle age, lying flat in bed, who looks sick. Eyes are watery and he coughs frequently. No evidence of severe pain or anxiety. He is conscious and rational. The skin is hot. Head and ears are negative to external examination. Eyes: Extra ocular movements are normal. No nystagmus, strabismus or ptosis. No failure of convergence. Conjunctivæ are watery, scleræ are clear. Pupils are equal, regular and react actively to light and accommodation. Nose is not obstructed on right; on left there is slight obstruction by deviated septum. Mouth. Tongue is reddened and protrudes in the median line with no tremor. Teeth are poor and are poorly kept. Throat is reddened. Neck shows no adenopathy, no stiffness. Thorax: Both sides are symmetrical and move equally. Heart: P. M. I. is in the fifth space in the nipple line. Relative dulness extends from the right sternal margin to 10 c. m. to the left in the fifth space, 7 c. m. in the fourth space. Upper border of dulness is at the third rib. There is no substernal dulness. Cardiohepatic angle is acute. Sounds are regular, clear, good quality; rate, 100 per minute. No murmurs or thrills are present. P^2 is greater than A^2. Lungs: Resonant throughout except at the apices in front and bases behind. There is slight dulness at the left apex extending down to the second rib, and there is marked dulness at the right apex both in front and behind extending downward to the third rib. Both bases behind show slight dulness and diminished excursion of the diaphragm. Tactile and voice fremitus are increased over the right apex. The breath sounds are amphoric in character. Whispered voice is much increased. No rales are made out. Over the left apex the fremitus is diminished, breath sounds are also slightly diminished, no rales are heard. No rales are heard at the bases behind, and the fremitus is slightly diminished. Abdomen: Level, held somewhat tensely. No masses, spasm, or tenderness. Tympanitic excepting in flanks where there is slight dulness which does not shift. Liver: Dul-

ness extends from the fifth space to the costal margin. Edge is not felt. Spleen not felt. Kidneys not felt. Genitalia normal. Extremities: Very little subcutaneous fat. No scars, varicosities or œdema. Reflexes: Abdominal and cremasteric not elicited. Knee jerks are active and equal. No clonus, Oppenheim, Gordon or Babinski.

December 26. — Bed bath. T. B. precautions. Soft solids.

December 27. — Extras of milk and eggs.

December 28. — Breath sounds over the back seem clear, and no rales were heard except at the left apex after a cough and in the midscapular region a few, which cleared up after one or two breaths. In the fronts and axillæ the breath sounds are normal and no rales are heard. Heart action: sounds are rather rapid and resemble one another in character. There is a slight systolic murmur heard at the left border of the sternum at the junction of the fourth rib. Otherwise, no abnormal heart sounds are heard. My feeling is that there is not enough in the lungs to account for the febrile condition.

X-ray report, Dec. 30, 1914. — 11.42 A.M. The examination of the chest shows negative findings.

December 31. — Examination of the heart, lungs and abdomen is negative. The negative physical findings, together with the long-continued fever and cough, strongly suggests the possibility of miliary tuberculosis.

December 31. — Brown mixture 8 c. c.

January 3, 1915. — Alcohol sponge.

January 4. — The heart action is rapid and the sounds are of poor quality and similar in character. No abnormal heart sounds are heard, except for a slight systolic murmur along the left border of the sternum and in about the third space down. Percussion over the fronts and axillæ on the two sides seems about the same. Below the second rib on the right the tactile fremitus is increased over that on the left. The same is true in the right axilla. Beginning at the fourth rib anteriorly, and extending down toward the axillæ, is a loud leathery friction rub. There is evident involvement of the pleura in the right axilla.

January 5. — Patient's Von Pirquet test is negative at 48 hours.

January 5. — This morning there are a few scattered crackles in the right front and axilla, but no friction rub is heard. There is no dulness in the right axilla or at the right base posteriorly.

January 5. — Codein sulphate, .015 grams; veronal, 0.3 grams; electric heater to right side.

January 5. — About 12 o'clock last night patient woke with a sudden sharp catching pain on the right side, which caused him to cry out rather constantly. When seen, there was no definite pleural friction in the right axilla where the pain was located, though I could hear occasional fine crackles. These may have been due to a friction rub, but seemed to me to be intrapulmonary. Under veronal and codeia patient promptly went to sleep, and this morning is again quite comfortable. Physical examination disclosed nothing new. Crackling rales cannot be heard.

January 6. — House diet.

January 8. — This morning the patient talks rather foolishly to the nurses, and is evidently somewhat out of his head. Lungs signs are entirely absent. There is no Kernig, no stiffness of the neck. Mental condition may be due to his long-continued fever, and it may mean the beginning onset of miliary tubercular meningitis. He will be watched and lumbar puncture done as soon as it seems absolutely justifiable.

January 9. — 20 c.c. aromatic fluid extract of cascara; codein sulphate, .015 grams.

January 9. — Homatropin hydrobromid 1 per cent., 1 drop in each stat.

January 10, X-ray Report. — The examination of the teeth, specially desired, shows no evidence of a destructive process about the roots. There is a deviation to the right of the septum of the nose. The left maxillary and ethmoidal sinuses are slightly cloudy.

January 10. — This morning the patient got out of bed and was quite delirious. He talked about a colored man with a basket on his head who spent a long time with him this morning. He is very irritable, does not complain of headache, however, and there is no stiffness of the neck, — no Kernig.

January 11, Opthalmoscopic Examination. — Fundus O. S. — The veins are full and tortuous. The margins of the disc are quite obscure. The lamina cribrosa is not discernible. There is probably about one diopter of swelling. Fundus O. S. — The veins are full. There is undue capillarity. Possible hyperæmic stage of beginning choked disc.

January 11, Laryngoscopic Examination. — There is diffuse laryngea reddening, but otherwise nothing abnormal is made out. The cords are well seen and move well.

January 12. — 2 c. c. pills; S. S. enema in A.M.; morphia sulphate, .015 grams.

January 13. — Patient's temperature reached 104 degrees last night, and the pulse has gradually climbed to 120 degrees. There has been no immediate increase in respiratory rate with this, and no change in sputum character. On examination, the left clavicle is slightly higher than the right. The chest is otherwise symmetrical, and movements on the two sides are equal. *Lungs:* The left appears normal throughout. On the right side there is dulness below the seventh thoracic spine posteriorly, and this reaches the fifth rib in the nipple line. Breath sounds in the dull area are very distant, scarcely audible at all. Tactile fremitus cannot be obtained, and vocal fremitus is very distant. The signs are those of a slight amount of fluid in this chest, and it should be noted that this is the side upon which previously a friction rub has been heard. *Heart:* Right border of dulness extends 4 c. m. to the right of the midsternal line in the fifth space; the left border extends 12 c. m. to the left of the midsternal line in the fifth space; the upper border is in the third space. The sounds are regular, very short and snapping, especially the first, which becomes

very distant toward the base. P^2 is greater than A^2. No definite murmurs can be made out. Patient grows worse every day, and will soon have to be put on the D. L. He was moved downstairs last night because of his delirium, which has appeared occasionally in the last 2 or 3 days, it being feared that he might attempt to get out of the window or go downstairs.

January 13. — 2 c. c. pills.

X-ray Report, January 13. — The examination of the chest shows the presence of a generalized cloudiness throughout the right side varying in density. The cardio-hepatic angle is obliterated. The right heart border may be seen, however, in normal position. The findings are suggestive of a consolidating process throughout the right side.

January 13. — On percussion, the right lung behind shows a distinct dulness below the angle of the scapula, with rather harsh breath sounds and no increase in vocal fremitus and no rales. With this exception, both lungs give good resonance throughout, normal breath sounds and no rales. The persistent fever, leucopenia, and no definite physical signs give no positive diagnosis, but miliary tuberculosis is not improbable. The slight eye changes might have this cause. The spleen is not palpable, and there is no increase in size to percussion. The decayed teeth are the only things suggestive of a focus of infection. The X-ray showed very slight changes about some of these, but apparently not enough to explain the fever, or the condition of the patient.

January 14. — Codein sulphate, .015 grams.

January 15, Rectal Examination. — No external hemorrhoids, no internal hemorrhoids or fissures felt. Prostate is just palpable anteriorly, and does not appear to be markedly enlarged. There are no masses felt. No blood is present on examining finger.

January 15. — In the right back there is flatness below the midscapula. The line of flatness extends forward, slanting into the axilla, and corresponds well with the outline of the right lower lobe. In the fourth and fifth spaces in front, respiratory sounds are distant, but there is no dulness. Over the flat area behind, breath sounds are very distant and are bronchial in character. No rales are heard. Vocal fremitus and tactile fremitus are both decreased, and there is no Grocco's sign. The patient probably has a solidification of the right lower lobe. I advise lung puncture, with the idea of finding tubercle bacilli.

January 15. — Following note of to-day, Dr. —— made the lung puncture as directed, and got fluid from the pleural cavity which had the characteristics of a tuberculosis exudate. This has been cultured and put into a guinea pig. This fluid has been suggested by the signs in the right side, but a definite diagnosis of it had not been made before the puncture. His X-ray plate showed a diffuse cloudiness throughout the right chest, which was thought to be a diffuse consolidation. This, however, was taken with the patient lying flat, and I do not see why one should expect a clear upper level under these circumstances. Patient's

family have grown more and more worried about his condition, and have insisted more and more strongly that he should be brought home. Being impossible to resist them any further, he is discharged to-day against advice, with the probable diagnosis of miliary tuberculosis. Result: Discharged against advice, unimproved. Treatment not completed.

The following is a copy of report of examination by the Accident Department of the Massachusetts Employees Insurance Association: —

October 19. — First examination.

Diagnosis: Contusion and abrasion of right foot.

Probable disability, ten days more.

History: While handling a barrel of beer he slipped, and with the barrel rolled into cellar injuring his right foot. Was treated by his family physician.

P. E. Scar of a healed abrasion about halfway between heel and toes on outer border of foot. There is some thickening and tenderness at this point. Toes are stiff, and he holds foot rigidly when he walks. Motions of ankle o. k.

Rx. Use foot freely. Report in one week.

October 26. — Much better, but there is a contraction of the calf muscles so that extension of foot is limited. He will need another week.

November 2. — To go to work and see how it goes. To return if unable to work.

November 3. — Says he cannot work yet; had much pain last night. Spasm of calf muscles has disappeared. Says he will try work Monday, November 9. There is some tenderness at tarso-metatarsal joints still present, but he should be able to work in a few days.

The evidence shows that the employee, Dennis G. McCarthy, received the injury on Sept. 14, 1914. Dr. Joseph L. Lockary, his attending physician, stated that he found an abrasion on the right leg, 5 inches above the ankle, and another a little below the ankle. The employee complained also of having a very sore foot. The abrasions became infected, and he treated them until Sept. 28, 1914, when the foot indicated that its condition was favorable. The employee was advised to consult the insurer's physician if he continued to suffer. On Oct. 19, 1914, the employee called at the hospital maintained by the insurer, where an examination was made by Dr. Benjamin E. Sibley, which showed a healed scar on the outer edge of the foot, one-half way between the toes and the heel. There was

no sign of sepsis at that time, and the employee was advised to use the foot freely and return to the hospital a week later. He returned on Oct. 26, 1914, and showed improvement in the muscles of the foot. Advice was given to continue the limbering process. The employee returned to work on Nov. 7, 1914, after an absence of about eight weeks. He remained at work for a period of three weeks. He was treated by Dr. Charles Sullivan first on Dec. 6, 1914, and at different intervals until his death, on Feb. 2, 1915, with the exception of the period from Dec. 26, 1914, to Jan. 15, 1915, when the employee was treated at the Peter Bent Brigham Hospital. Dr. Sullivan found nothing except a suspicion of some involvement of the apex of the right lung, which caused him to suspect a bronchial or tubercular condition. He prescribed something for the cough, a general tonic, and recommended plenty of fresh air, rest and food. Later, he suggested that the employee be taken to the hospital, and the record there showed that the probable diagnosis was "miliary tuberculosis." The patient was discharged, unimproved, against advice, his family insisting upon his removal home. Dr. Sibley had seen the employee before his removal to the hospital, on Dec. 16, 1914, at which time his conclusion was that he was suffering from bronchitis having no causal connection with the injury. The foot was all right at that time. Dr. Sullivan again attended the employee after his return home from the hospital, and finally diagnosed the condition from which he died as acute miliary tuberculosis. Previously, typhoid and tuberculosis were the only things he considered, outside of a bronchial condition. Dr. Timothy J. Murphy, the expert called by the dependents, stated that the physical shock of the injury was an adequate cause for the disease from which the employee died. Dr. Edward O. Otis, an expert on pulmonary diseases, called by the insurer, stated that in his opinion the acute miliary tuberculosis from which the employee died had no relation to the injury, and that it was unlikely that such an injury had any causal relation with said disease.

The evidence summarized above, and all the evidence, leaves the committee in doubt as to the relation of cause and effect between the injury and death, it being entirely a matter of

conjecture as to whether or not the injury lowered the resistance of the employee to such a degree as to light up a dormant condition of tuberculosis and bring about his death from acute miliary tuberculosis. The probability appears to be that the employee had the bacteria of tuberculosis in his system prior to the date of the occurrence of the injury, and that the spreading of these bacteria all over his system was merely coincident with, but had no relation to, the occurrence of the injury and conditions intervening during the period subsequent to said injury and prior to his death. The employee had recovered from the effects of the injury and returned to work. There probably was some slight stiffness in the injured part, due to its disuse, but the injury itself had healed. No complaint was then made of a cough, such as his attending physician found after he had again discontinued work. It was entirely within the range of probability that a new cause had intervened during the time the employee returned to work and the date of his first treatment by Dr. Sullivan. In fact, the evidence shows that such was the cause, as an involvement of the right lung was noticed. Later, the hospital confirmed as probable Dr. Sullivan's tentative diagnosis of tuberculosis, which the latter, after treatment to the time of his death, finally positively diagnosed as acute miliary tuberculosis. The evidence of the physicians leaves it entirely a matter of conjecture as to whether such a condition was caused by a lowering of the employee's vitality as a result of the injury. The committee's opinion is that, in all probability, it is not reasonable to believe that the injury was a factor in causing the death of the employee.

The committee of arbitration finds, upon all the evidence, that the personal injury received by the employee on Sept. 14, 1914, had no causal relation to his death by reason of a condition of acute miliary tuberculosis on Feb. 2, 1915, and therefore dismisses the claim for compensation filed by his widow.

JOSEPH A. PARKS.
ARTHUR J. SANTRY.

James Buchanan, Jr., dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Wednesday, Nov. 24, 1915, at 10 A.M.

No new evidence was introduced, the case being considered by the Board upon the facts reported by the committee of arbitration.

The Industrial Accident Board, having reviewed the evidence as reported, affirm and adopt the findings and decision of the committee of arbitration.

FRANK J. DONAHUE.
JOSEPH A. PARKS.
DAVID T. DICKINSON.

CASE No. 1663.

SARAH HOWARD, WIDOW OF WILLIAM HOWARD, *Employee.*
THE L. A. THOMPSON SCENIC RAILWAY COMPANY, *Employer.*
TRAVELERS INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DEPENDENCY. DEATH DUE TO HEMORRHAGE FROM PULMONARY TUBERCULOSIS. NO CAUSAL CONNECTION.

The only evidence that the employee had received an injury in the course of his employment was a statement he made three months before his death, that he had been struck in the stomach by a plank.

Held, that death was due to natural causes.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Sarah Howard, widow of William Howard, *v.* Travelers Insurance Company, this being case No. 1663 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, William C. Prout, representing the insurer, and Arthur T. Good, representing the

dependent, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Revere, Mass., Wednesday, March 31, 1915, at 10 A.M.

Thomas Kelly appeared as counsel for the dependent, and L. C. Doyle appeared for the insurer.

William Howard of Revere, an employee of the L. A. Thompson Scenic Railway Company, died suddenly at the plant of the Thompson Company at Revere Beach on the night of Aug. 15, 1914. The question was whether or not his death was the result of an injury alleged to have been received by him some time in the preceding May. There was also a question of the dependency of his mother. Howard received an average weekly wage of $14.

The only evidence that Howard had sustained an injury in the employ of the Thompson Company was the testimony of John M. Norris of Revere, with whom he had boarded, who said that Howard had told him in May preceding his death that he (Howard) and another employee were carrying some planks one day, and that the other man dropped them and they flew up and struck Howard in the stomach. Norris noticed his failing health from that time.

There was evidence that Howard's aged mother, who boarded with a married daughter in Everett, was wholly dependent upon her deceased son for support at the time of the latter's death.

Dr. Edward J. Monahan of Revere testified that he was called in when Howard died. The latter was dead when he arrived. Howard was thin and emaciated. Death was due to a hemorrhage, following pulmonary tuberculosis.

The committee of arbitration finds upon all the evidence that the death of Howard was due to natural causes having no causal connection with his employment, and that, therefore, his dependent mother is not entitled to compensation under the act.

FRANK J. DONAHUE.
WILLIAM C. PROUT.

Arthur T. Good dissents.

CASE No. 1667.

HENRY M. ROCHE, *Employee.*
UNITED SHOE MACHINERY COMPANY, *Employer.*
MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DEATH RESULTS FROM THE INJURY. CHAIN OF CAUSATION. DOUBLE COMPENSATION CLAIMED. OCCUPATIONAL DISEASE. TUBERCULOSIS. INHALATION OF EMERY DUST CAUSES PULMONARY TUBERCULOSIS. CLAIMANT ALLEGES THAT THIS CONDITION WAS DUE TO THE SERIOUS AND WILLFUL MISCONDUCT OF SUBSCRIBER. EVIDENCE DOES NOT WARRANT ASSESSMENT OF DOUBLE COMPENSATION. REGULAR INCAPACITY COMPENSATION AWARDED.

The record shows that the employee was employed by the subscribers, and worked on dry grinders for a period of three years prior to Jan. 3, 1914. Certain "surface grinders" were supplied with blowers, but the dry grinders were not so supplied There was a continuance of dust in the air all the time, as there were no blowers to take the dust away. This was particularly true when the grinding wheels were being trimmed with a diamond. The employee had directed the attention of his foreman to the need of a blower on his machine, and afterwards asked for a transfer to another department. The evidence does not show that the foreman understood that the employee's reason for making the request for a transfer was solely that the change would be beneficial to his health, and that neither the foreman nor the superintendent regarded the absence of a blower as likely to bring damage to the health of the employee. No other employee had complained of the absence of blowers, and no case of personal injury or illness had been reported to the subscribers as having been caused by their failure to furnish blowers.

Held, that the employee was entitled to the regular incapacity compensation; the claim for double compensation was dismissed.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Appealed to Supreme Judicial Court.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Henry M. Roche *v.* Massachusetts Employees Insurance Association, this being case No. 1667 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, John T.

Crowe, representing the employee, and George E. Morris, representing the insurer, after being duly sworn, heard the parties and their witnesses at City Hall, Beverly, Mass., on Tuesday, May 11, 1915, at 10.30 A.M.

John W. Cronin appeared as counsel for insurer, and William E. Fowler as counsel for employee.

The questions raised in this case were whether or not the claimant was injured by reason of the serious and willful misconduct of his employer, or of any person regularly entrusted with and exercising the powers of superintendence, and thus entitled to double compensation, whether or not the claim therefor was made within six months, and if the failure to do so was occasioned by mistake or other reasonable cause, as provided in sections 15 and 23 of Part II. of the compensation act.

The claimant has been paid ordinary compensation from Jan. 17, 1914, the fifteenth day after the injury, to April 30, 1915, being the regular time for its current payment, and said payments for ordinary compensation are to continue in the future during incapacity. The injury and incapacity for which said compensation is being paid by agreement between the parties made on Sept. 16, 1914, was for incapacity from pulmonary tuberculosis caused by the effect of emery dust upon his lungs, in the course of his occupation.

Henry M. Roche testified substantially as follows: That he had been at the sanatorium at Rutland for sixteen months since January, 1914; that he stopped work Jan. 3, 1914, after having worked three years. He worked on dry grinders all the time, and there were between seven and eight of these machines in the room, and between eighteen and twenty surface grinders; that the surface grinders were supplied with blowers, but the dry grinders were not. He stated that there was a continuance of dust in the air all the time, as there was nothing to take it off, especially when the men would trim a wheel; that when the wheels were being trimmed with diamond one would walk away, as the dust could be seen more at this time than at others; that the dust would fall a distance of 10 or 12 feet around. He worked on the emery wheels all the time, and there was always dust flying when they were in use. He thought his face

was about 8 inches from the wheel as he worked, and that the dust got into his lungs more or less. The saucer wheels were 6 inches in diameter, the cup wheels were about 3½ inches in diameter, and the other wheels that were used for odd jobs were probably 7 or 8 inches. None of the wheels were protected by blowers. The wheels were soft in order to protect the work he was doing, for if they were hard the tool would be burnt. There was more dust from emery wheels than from saucer wheels. He asked Mr. McKenzie three times to have blowers placed on the machines. The first time he asked was about two months after he commenced to work, and he was informed that they were going to move to another building. The second time he asked for blowers was during his second year with the company. He asked if there was any chance of getting blowers for the machines and was answered that they did not know. His third request was made about two months before he got through working, and he was answered the same as at the second request. He had an opportunity to go to another job, and spoke to Mr. McKenzie in regard to it, but he would not allow him to leave his present work, and he, the witness, threatened to get through then. Mr. McKenzie was the only man he asked to place on blowers. He had heard Harry Smith ask Mr. Loomer once for blowers; the man showed Mr. Loomer where the dust was lying on the machines, and asked him if there was any chance to have blowers put on. He did not hear a reply made one way or the other. This was about the last part of 1912. He stated that Mr. Smith placed an old blower made out of sheet metal on his machine, with the intention of drawing away the dust; this had a tendency to do so, but did not amount to very much, and it only remained on one day. There were some surface and hole grinders on the other side of the room that were supplied with blowers; the emery wheels in the repair department had blowers on them. He has been unable to work since a year ago last January, and has been in Rutland since January 6; there had never been any tuberculosis in his family. He thought that if the machines had blowers attached to them the dust would be burned away by the suction of the blower. The 3-inch wheels threw off more dust than the larger ones because they break up quicker, being

softer. He thought there were about eight dry-grinding machines and twelve or fifteen wet grinders, making a total of forty or fifty machines in all. He worked practically on two types of wheels, which were small cup wheels and 6-inch saucer wheels, although he did some work on large 7-inch wheels, which were three-quarters of an inch in diameter. Sometimes he would finish his work on a larger wheel, which might be once a week or every two weeks, and he might work three or four hours a day on the larger wheel; although this depended upon the amount of work to be accomplished. He considered there was more damage from the 3-inch wheel; the 7-inch wheels were harder. He thought that about half his time was spent on the small cup wheels, and the other half spent on the 6-inch saucer wheels; he had worked on one of the large wheels two months before he stopped work. There was a considerable amount of dust from a 7-inch wheel; the dust was discernible, as they used artificial light. There was only one 7-inch wheel in his department. He had never worn any sort of a protection over his nose. He considered the ventilation was fairly good. There were blowers on the straightening machines. He had only learned lately that in his case it made a difference whether the wheels were 4 or 7 inches. His work was that of a grinder of reamers and cutters.

David B. Morehouse testified substantially as follows: That he had been working for the United Shoe Machinery Company for twenty-eight years, and that from January, 1911, to January, 1914, his position was that of foreman of the grinding department. He remembered that the employee worked for him two years, and a year for another man. There were no blowers on the grinders where the employee worked; he asked him for blowers. He thought the dust was flying as much as usual at this time; there was always dust flying in every direction. The witness told him that he would communicate with a higher authority in regard to his request. He then talked with Mr. McKenzie, and was advised that they were going to move the department, and he did not wish to place blowers on the machines at present. He had heard that other men had asked for blowers, but none of these had come to him with the request. He thought the blowers had been put on about seven

months ago. The time for trimming the wheels with black diamond varied, but sometimes it would be necessary to do this every three hours, and at other times every half hour; there was more dust in the air at these times because whatever came off the wheel was in the air. He had never known of the employee's desire to be transferred. He considered it an improvement to have the blowers on the machines. He did not think there was more dust thrown off from a 7-inch wheel than from a smaller one. He thought there would be more danger, as far as dust was concerned, from a small wheel than from a 7-inch wheel, because as a rule a wheel smaller in diameter had to be a shade softer than the larger one to do its work. As he understood the statute in regard to 7-inch wheels, this was more for protection from getting injured than from the dust, because if a 7, 8 or 10-inch wheel should break it would be apt to injure one, whereas one would not be likely to notice a 3-inch wheel if it should break.

The following statutes were referred to by counsel for the claimant for their bearing upon this case: Acts of 1909, chapter 514, section 86. Acts of 1903, chapter 455, section 1.

Dr. Walter F. Mahoney of Westborough testified substantially as follows: That he had examined the employee and found pulmonary tuberculosis in an advanced form. He thought the breathing in of the emery dust had caused it; his right lung was affected at the time of his examination; it was a subacute state he was in, merging from acute into chronic. An examination could not disclose the cause of the tuberculosis; the only way to determine the cause is by an autopsy. Tuberculosis is an acquired disease — a germ disease, and not hereditary. He thought an irritation would cause an inflammation of the mucous membrane in the lungs; this irritation means that the tissues are not capable of performing their functions properly; when the germ makes its entrance the tissue is in a weakened condition. A person would have to be very much run down to develop tuberculosis. He was of the opinion that this might be termed a traumatic type, as there was damage done to the tissue.

Charles W. McKenzie testified substantially as follows: That he was floor foreman from January, 1911, to 1914. There were

no blowers on the dry grinders at this time, but that they had been installed about a year ago. The employee had asked him for blowers in a casual way once. The witness told him he would look into it and put it before Mr. Loomer, making a report to him that it had been suggested to have suction pipes put on the grinders, and that this was reported to the office. He thought he answered him by telling him that the department was expecting to move into another building; this was the reason for not having the blowers on. He thought it was about a year and a half after he had been with them that he asked for the blowers, and that it would be intimated by his answer that the blowers would be put on when they had moved. He did not remember of the employee asking to be transferred, but it was brought to him indirectly by Mr. Eastham, and his request was refused. He stated that it took a long time to get a man thoroughly broken in and familiar with the work, and he did not wish to lose him at the time; but he always aimed to accommodate the men and to do what seemed consistent. The employee had asked to be transferred after he had complained about the blowers; he made no reference to the dust when he asked for the transfer. The witness thought the blowers were put on for the purpose of further safeguarding the health of the workmen. He had been foreman for about twelve years, and during this time he had never known of a man getting tuberculosis from these conditions. The department to which the employee desired to be transferred was an outlet which a great many men desired, as it served as a stepping stone for a road position. He did not know of any 7-inch wheel being used on the particular work the employee was on, as he was a reamer and cutter grinder; that he did not think he would be required to work on a 7-inch wheel. There was a 7-inch wheel across the room on the surface grinder which was 40 feet away. He did not know of any 7-inch wheels in the group of grinders in which the employee worked. He considered that emery dust under ordinary conditions would not cause ill health. He knew of no law in regard to protecting men from emery dust, but he did know about the law in regard to the protection hoods. The large machines with a hood were not connected with a blower, and

there were some machines connected with a blower that had no hoods. He thought the amount of danger from dust was about equal from the small and large wheels. The room the employee worked in was 1,000 feet long, 60 feet wide and 11 feet high.

John F. Fisher testified substantially as follows: That he had been working for the company about five and a half years as a grinder, and there were no blowers on the dry grinders until last summer. The employee had asked him for blowers when he was foreman of the job, and he referred him to Mr. McKenzie; he made this request in less than a year after he had started working. He never heard any of the other grinders ask for blowers. He had a blower on the machine he operated; it was on the machine when he started to work; he did not know how they happened to be put on. He worked about 20 feet from the employee. He thought that if a wheel was used under ordinary conditions it would last two days; sometimes they would not last as long, but he had never known of a wheel being used up in a day. He was of the opinion that a medium wheel was used for reamers, and that the same amount of dust flew from the small wheels as from the large ones. A man would not inhale very much emery dust if the wheel lasted two days. With an average amount of work the wheels would be trimmed with black diamond three or four times a day; there was more dust at these times than when the machine was in ordinary use. The diameter of the wheels which have the blowers is 6 inches.

Harry A. Loomer testified substantially as follows: That he was superintendent and had been in this position since 1898. He remembered a man asking him for blowers who had a fan on the opposite side of the shaft; that he went over and looked at his machine. He told Mr. McKenzie about the moving proposition, and that during the time this was being decided nothing would be done in regard to the blowers; he did not care to have blowers put on temporarily. He knew there was a law in regard to 7-inch wheels, but he never knew the reason of this; he had not given the matter much thought. Inspectors came around once a year, but they never made any comment about the dust being dangerous for the men. If the company

got an inkling of anything going wrong they were inclined to do more than was necessary so as to be on the safe side. He never considered that this work was dangerous, and had never heard any complaints; but he had heard complaints where men worked on polishing reamers that were run by water. He considered there was very little dust in the air, that one could hardly notice it; that very little of the dust went in the air. This employee was the only case he knew where a man became ill or got tuberculosis from the dust. The witness had used a sponge over his nose and breathed through it. He told a Mr. Smith about this protection. He, the witness, had no fear of tuberculosis coming from the dust, but he did this as a safeguard from uncleanliness. He thought that if the employee objected to the dust he could place the sponge over his nose, as he, the witness, had previously done. He had not heard of men having sore lungs from grinding work. He thought the statute passed in 1903 was in regard to a 6-inch wheel, but he did not give this much thought.

Henry W. Eastham testified substantially as follows: That he was superintendent of the assembling department. As he remembered it, a Mr. Riley, who was superintendent of the employee at the time, came to him to see if there was a chance for him in the assembling work. It was the custom not to take men out of the department without the sanction of the foreman, because this would tend to handicap the work of the department. He talked with Mr. McKenzie and asked him if he had any objections. He seemed to object to this and stated his reasons. The matter was, therefore, dropped. He said the story that was brought to him was that there would be an improvement in the employee's condition if he could enter his department, and that he, the witness, understood this to mean that he would acquire a wider experience; any improvement in his physical condition was not mentioned to him.

George H. Vose testified substantially as follows: That he was assistant general superintendent, and that he was familiar with the machines and the emery wheels. He had no complaints from the State inspector in regard to his factory or emery wheels. He stated that the company had always, since they had been located in Beverly, attempted to put safeguards

on any machine where it was at all likely that there might be an accident; that they had started to do this a few years ago with such machines, where, in their opinion, there might be likelihood of an accident, until they feel that the factory is in a very good condition at the present time. The few accidents that had occurred had been minor ones and unavoidable. At the present time they are having a pipe put across the front of the building in case of fire; that if a fire did occur a water curtain could be dropped, which would protect the glass windows and other property. The business grew so much that they put an addition on to buildings A and B of 300 feet. Three or four years ago they expected to take the department, which had been under discussion, and which occupied the first floor of building A, and put it into the new addition of building B. At the time these buildings were completed the business dropped off some, and they did not deem it advisable to go to the expense of making this change. He thought there were about two hundred machines in this department; on one side of the building there were about twenty dry grinders that had been equipped with an exhaust system; where the employee worked there were ten dry-grinding machines which are now equipped with an exhaust system. He stated that they had a heating system and an exhaust system for taking out the bad air. The exhaust system was put on to the dry grinders to take away the dust which comes from the wheel; a large portion of the dust rested on the machines, and he thought the machines presented a better appearance without the dust. He did not consider that the question of health entered into this. He had two men whose duty it was to keep the factory in good order; they went around sweeping and washing the floors. He never thought a man would get tuberculosis by breathing in the emery dust. The factory was conducted on such a high plane that they were not obliged to advertise for help.

The committee finds on the weight of the above evidence that the claimant's injury was not caused by reason of the serious and willful misconduct of the subscriber or of any person regularly entrusted with and exercising the powers of superintendence. The most that is shown against the subscriber or its superintendents is, perhaps, some lack of care, based upon

a mistake of judgment, rather than wanton carelessness or disregard of the employee's safety or health. It appeared that a State inspector had inspected the premises and the conditions under which the work was done with these emery wheels as often as once a year, and had found no fault or criticism of the conditions found. It has been held by the decisions, uniformly, that negligence is not sufficient to be called serious and willful misconduct, and that something even more than gross negligence is contemplated by the statute. The conduct that is contemplated is such a wanton disregard of the safety and health of an employee that it possesses an evil, immoral and quasi-criminal nature, as was said in the cases of Lester W. Nickerson *v.* New England Casualty Company (Boston Woven Hose & Rubber Co., employer), 218 Mass. 158–161, and John J. Burns's (dependent's) Case, 218 Mass. 8 (March 4 to May 22, 1914). No such guilt or disregard of the employee's safety appears to have been shown in the subscriber or its superintendents in this case.

DAVID T. DICKINSON.
GEORGE E. MORRIS.

John T. Crowe dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room of the Board, New Albion Building, Boston, Mass., on Thursday, July 29, 1915, at 10.30 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was introduced at the hearing on review, all the material evidence being reported by the committee of arbitration.

The requests for findings and rulings attached hereto are refused in so far as they are inconsistent with these findings.

The Board find and decide that the personal injury which incapacitated the employee arose out of and in the course of his employment; that the pulmonary tuberculosis which caused his incapacity was due to the effect of emery dust being inhaled

into his lungs by reason of his occupation; that the employee had directed the attention of his foreman to the need of a blower on the machine which he was operating; that he had afterwards asked for a transfer to another department, but that it is not clear on the evidence that his foreman understood that his reason for the request was solely that such a change would be beneficial to his health; that neither the foreman nor the superintendent regarded the absence of a blower as likely to bring damage to the health of the employee; that no other employee had complained of the absence of blowers; that no case of personal injury or illness had been reported to the subscriber as having been caused by the failure to furnish blowers; that the reason for the failure of the subscriber to furnish blowers was due to the fact that it was expected that the department would be removed to another building, and there appeared to be no urgent need of the blowers before such removal; that a State inspector had inspected the premises and the conditions under which the work was done with these emery wheels as often as once a year, and had found no fault or criticism of the conditions found; that men were employed regularly to keep the place of employment clean; and that the most that is shown against the subscriber or its superintendents is a lack of care, based upon a mistake of judgment, but not such a lack of care as to constitute serious and willful misconduct within the meaning of the statute.

We find, therefore, upon all the evidence, that the employee is not entitled to double compensation, neither the subscriber nor any person regularly entrusted with and exercising the powers of superintendence being guilty of serious and willful misconduct in connection with the occurrence of the personal injury which caused such employee to be totally incapacitated for work by reason of a condition of pulmonary tuberculosis.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.

The employee, Mr. Roche, asks the Board for the following findings and rulings, viz.: —

1. That the injury sustained by him was due to the emery dust inhaled.

2. That the emery dust flying from the wheels in this small tool department of this factory, which was not taken by fans, blowers, hoods and hoppers, such as the statute of 1909, chapter 514, section 78, contemplates, outside of the room, was, during the three years (1911 to 1914) that the employee, Mr. Roche, worked there upon them, injurious to the health of the employee.

3. That there were no blowers or fans upon the dry grinders in this department.

4. That your petitioner, as well as other fellow-employees, had repeatedly requested that blowers be installed.

5. That the employer did not instal them solely on account of the additional expense.

6. That the employer recognized the necessity and propriety of having its emery wheels thus protected by promising for some four years to put them in as soon as they moved over into the new building, and that they put off their employees (including your petitioner) with these promises.

7. That shortly after the petitioner was compelled to leave by reason of pulmonary tuberculosis to go to the Rutland Sanatorium, where he now is, blowers were as a matter of fact installed by the employer throughout this department upon all the dry grinders.

8. That upon all the evidence there was as much danger from the dust from the wheels under 6 inches in diameter as from those over 6 inches, and as much dust flying through the room from them if not more, and that this, upon all the evidence, the foremen and superintendent well know.

9. That after the necessity for installing blowers was called to the attention of the company it elected not to install them at that time, while virtually agreeing to put them in later on.

10. That the injury to the employee, Mr. Roche, was due to the absence of these blowers and fans, or other safety appliances for the carrying off of the emery dust.

11. That the superintendent recognized the danger by advising the workmen to wear sponges over their noses if they wanted protection.

12. That the words "serious," "willful," and "misconduct" are to be taken, in the interpretation of this act, in their ordinary and common and usual meaning, as understood and used by common people generally, and that they possess no technical significance whatsoever.

13. That "serious" means "not trivial or trifling, but weighty or important," in either the nature of the misconduct or its consequences.

14. That "willful," in the interpretation of this act, means "subject to the will and volition of the doer," or, in other words, "that into which the will enters," an intentional as distinguished from misconduct into which no act of the will does enter.

15. That malice is not an ingredient essential to "serious and willful misconduct," and that it does not mean necessarily a willful design to injure either actually entertained or implied from conduct or circumstances, but that it is the intentional doing of something *either* with the knowledge that it is likely to result in serious injury *or* with a wanton and reckless disregard of its probable consequences.

16. That in any event the *probable*, if not necessary, consequence of neglecting and declining to instal these safety appliances for emery dust was after a period of years the injury to the health of some of its workmen, and that this employer disregarded this deliberately in its conduct of this department of its business.

17. That the employer elected not to instal these safety appliances, and that at the time he so elected he knew or ought to have known that its refusal was at least likely to result in serious injury to the health of some one, if not all, of its workmen.

18. That if it is criminal not to have dust protectors in the case of emery wheels 6 inches and over in diameter, it is clearly quasi-criminal not to have them in the case of wheels under 6 inches in diameter, *if the admitted danger from the small wheels is as great as from the larger ones* (as the evidence shows in this case overwhelmingly and without contradiction).

19. That the conduct which constitutes serious and willful misconduct as contemplated by the Legislature is not "of an evil, immoral and quasi-criminal nature," as found in the report of the committee of arbitration, but is such as is defined by the Supreme Judicial Court in Bridget Burns' Case.

20. That the evidence discloses serious and willful misconduct upon the part of the employer or its superintendents or foremen, and not merely "some lack of care, based upon a mistake of judgment," as found by the arbitration committee.

21. That the decision of the arbitration committee be revised by finding upon the weight of all the evidence that the claimant's injury or illness was caused by reason of the serious and willful misconduct of the employer.

CASE No. 1674.

JAMES MCKENNA, *Employee.*
FORE RIVER SHIPBUILDING CORPORATION, *Employer.*
MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. LOSS OF EYE. TUMOR CAUSING SEPARATION OF THE RETINA. NO CAUSAL CONNECTION WITH BLOW.

The employee claimed that he was struck in the eye by a flying piece of galvanised plate in April, 1913. In September, 1914, his eye was removed, and a sarcoma of the choroid was found in the enucleated eye. The tumor caused a separa-

tion of the retina which caused loss of sight in the eye. Expert evidence showed that a blow will cause separation of the retina, but separation of the retina does not cause tumor. The tumor increased the tension which caused the retina to separate. Tumors start from a cellular growth in the choroid which is there from birth.

Held, that there was no causal connection between the employment and the loss of the eye.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of James McKenna *v.* Massachusetts Employees Insurance Association, this being case No. 1674 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, George E. Morris, representing the insurer, and Charles H. Wilkes, representing the employee, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Quincy, Mass., Saturday, April 3, 1915, at 10 A.M.

John W. Cronin appeared as counsel for the insurer.

The employee claimed that some time in April, 1913, while in the employ of the Fore River Shipbuilding Corporation, he was hammering a galvanized plate when a chip flew up and struck him on the upper lid of the left eye. On Sept. 2, 1914, the eye was removed at the Massachusetts Charitable Eye and Ear Infirmary. Between the accident and up to the date of the operation he had lost one month's time; up to the date of the hearing he had lost at odd periods a total of three months in all. It was agreed that if the finding was in his favor he would be entitled to the maximum weekly compensation.

It appeared from the records of the Massachusetts Charitable Eye and Ear Infirmary, which were introduced in evidence, that McKenna was admitted to the out-patient department on Sept. 9, 1913, the diagnosis of his case being "separation of the retina of left eye — three months' duration." He did not return to the hospital until Aug. 4, 1914. On September 1 enucleation was advised "on account of sarcoma." The anterior chamber was at that time entirely obliterated, and the vision in the other eye was only one-fifth normal. Enucleation

was performed on September 2, and a sarcoma of the choroid was found in the enucleated eye.

Dr. Frederick H. Verhoeff, ophthalmic surgeon and pathologist at the Massachusetts Charitable Eye and Ear Infirmary, who performed the operation of enucleation, testified that he diagnosed the trouble as tumor the day before the operation, and after the operation he found an intraocular tumor in the sight of the eye. (The doctor showed a cross-section of the enucleated eyeball.) The tumor was a white one, which is of slower growth than black ones. The tumor was at the back of the eye. These tumors occur without a blow. Most frequently there is no history of a blow, and there is every reason to believe that they start from a little nest of cells in the choroid which are there from birth. These cells gradually grow and form these tumors. If due to injury we would have a history of injury in a majority of the cases. The character of the thing does not suggest injury. What one gets from an injury is generally something entirely different, not a tumor, and the eye shows on microscopic examination no evidence of a severe injury. It is only fair to say that a blow will cause separation of the retina, but separation of the retina would not cause tumor. Tumor causes separation of the retina. A slight blow from a chip of lead or steel would not cause separation of the retina. In separation of the retina not due to tumor the tension of the eye is normal. Where there is separation due to tumor the tension becomes increased; that is a fact well recognized by all ophthalmologists. In this case it was high tension, complete separation of the retina, so I did not hesitate in making my diagnosis, although I could not see the tumor and was not absolutely sure, of course, until I cut the eye open and saw that the tumor was there. A heavy blow struck by a hammer on the eyebrow might cause separation of the retina; there have been cases where it has happened through a sudden jar, such as a man falling down and striking his head hard. The retina is not on very tight. It is held in contact by the vitreous and comes out very readily. It does not take much to have it come off.

Dr. Henry B. Chandler, the eye specialist, appointed by the Board as an impartial physician, examined the employee on

April 3, and reported that in his opinion "the genesis of his trouble had absolutely nothing to do with the blow; the same thing would have happened if he had not received the blow."

The committee of arbitration finds upon the evidence that the blow upon the eyelid which the employee received in April, 1914, had no causal connection whatsoever with the growth of tumor which caused the loss of his eye; that any incapacity which he suffered was due to the tumor and not to the blow upon the eyelid; and that therefore he is not entitled to compensation under the act.

FRANK J. DONAHUE.
GEORGE E. MORRIS.
CHARLES H. WILKES.

CASE NO. 1688.

JENNIE CLAFLIN, WIDOW OF CALVIN H. CLAFLIN, *Employee.*
HENRY L. SMITH, *Employer.*
UNITED STATES CASUALTY COMPANY, *Insurer.*

ARISING OUT OF EMPLOYMENT. LIVERY DRIVER DIES FROM DRINKING HORSE MEDICINE. NOT A RISK OF THE EMPLOYMENT.

The employee died of belladonna poisoning as a result of drinking some horse medicine left in a medicine closet in the stable where he was employed. He had previously been known to drink other horse medicine kept in this closet, which, it was said, contained "dope." This medicine which he had been in the habit of drinking and the poisoning mixture which killed him were both in pint bottles, but the bottles were dissimilar in shape and the contents were unlike in odor and taste It was no part of the employee's duties to handle horse medicines.

Held, that he was acting outside the scope of his employment.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Jennie Claflin, widow of Calvin H. Claflin *v.* United States Casualty Company, this being case No. 1688 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, Matthias Hollander,

representing the dependent, and John A. McCaig, representing the insurer, heard the parties and their witnesses at the Selectmen's Room, Tribune Building, South Framingham, Mass., Tuesday, April 27, 1915, at 10 A.M.

J. P. Dexter appeared as counsel for the dependent, and A. R. Belyea appeared for the insurer.

The deceased was employed as a driver at the stable of Henry L. Smith, South Framingham. On the night of Jan. 26, 1915, he drank some horse medicine containing opium and belladonna, and died the next day of belladonna poisoning. The question was whether death was the result of an injury arising out of his employment.

The evidence was that on the night of January 26 a married daughter, Mrs. Mattie M. Tanner, had come to visit him at the stable, and while there began to cough. He urged her to take some of the medicine in question, but she refused, saying, "I do not want to die." Her father responded, "See, I am not afraid of it," and took a big drink from the bottle. He complained of burning in the throat and stomach, and after she left became so sick that a doctor was summoned and he was sent to the Framingham Hospital where he died the next day. A driver for one Eaton of Waltham, dealer in paper and twine, had put his horse up at the stable that night, and had left the medicine to be administered to the horse. It was no part of Claflin's duty to either handle horse medicines or administer them. An employee placed this bottle on a shelf in the stable office which contained other bottles of horse medicine. In 1914 his employer had noticed that a bottle containing medicine for horses' coughs seemed to require refilling rather frequently, and upon inquiry found that Moulton had been drinking it. The employer tasted it and found that it was a sweetish mixture. He asked a veterinarian who prescribed it what attraction it could have for Claflin, and was informed that it contained dope. This bottle was kept on the same shelf with that left by Eaton's driver, but it had been empty since the fall of 1914. Claflin's young son had seen his father drink from this bottle, and fellow employees knew that some months previous Claflin drank from this bottle. Both Eaton's bottle and the cough medicine bottle were pint bottles, but dissimilar in shape and color, and the contents were unlike in odor and taste.

Applying the definitions of "arising out of his employment," formulated by the courts of our own Commonwealth and of Great Britain, to the facts of the case at hand, the committee of arbitration is unable to find that the drinking of horse medicine, poisonous or non-poisonous, is incidental to the employment of a stable hand, particularly one who is neither required nor permitted to handle such medicines.

The committee of arbitration finds that the act of the deceased was something wholly outside the scope of his employment, and therefore the widow is not entitled to compensation under the act.

FRANK J. DONAHUE.
JOHN A. MCCAIG.
MATTHIAS HOLLANDER.

CASE NO. 1689.

EVA SAVAGE, WIDOW OF JOSEPH W. SAVAGE, *Employee.*
REED-PRENTICE COMPANY, *Employer.*
ÆTNA LIFE INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. ADDED RISK. DEATH RESULTS FROM THE INJURY. UNEXPLAINED ABSENCE. PRESENCE OF EMPLOYEE ON RAILROAD TRACK UNNECESSARY. SUBJECTED THEREBY TO NEEDLESS RISK OF INJURY FROM MOVING RAILROAD TRAINS. CLAIM DISMISSED.

The record shows that the employee was engaged in unloading a car which had been placed on a siding at the end of a spur track. Decedent and a fellow employee had been at work about two hours when it became necessary for one of them to go to a tool house to get a shovel. The fellow employee offered to perform this errand, and when he returned he found the decedent lying by the side of the track. The latter had been struck by a railroad train and killed. Only five or six minutes had elapsed between the time the fellow employee had left and had returned. The spur track upon which the car was placed ran parallel with the main track to Boston, and such main track was 8 feet away. There was apparently nothing which would require the presence of the decedent on the track where he was found, and there was an ample walk to the tool house at the right of the spur track, the use of which would have avoided any danger of injury or death from contact with passing trains had the employee any need to leave the car for any reasonable purpose.

Held, that the fatality did not arise out of the employment.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the finding of the committee of arbitration.

Appealed to Supreme Judicial Court.

Decision. — The court affirmed the findings of the Industrial Accident Board.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Eva Savage, widow of Joseph W. Savage, *v.* Ætna Life Insurance Company, this being case No. 1689 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman, representing the Industrial Accident Board, chairman, James C. Donnelly, representing the dependent, and Edwin H. Crandell, representing the insurer, heard the parties and their witnesses in Committee Room 30, City Hall, Worcester, Mass., on Monday, April 12, 1915, at 10 A.M.

John P. Halnon appeared as counsel for the dependent, and Charles C. Milton appeared as counsel for the insurer.

It was agreed that Joseph W. Savage was employed by the Reed-Prentice Company, which is insured with the Ætna Life Insurance Company; that the average weekly wages were $10.50, and that if the widow was entitled to compensation she would be entitled to $7 a week for five hundred weeks; that he was married and had three minor children.

The question at issue was whether or not the injury was received while the employee was within the scope of his employment.

Basili Hantros, a Greek, testified that he worked for the Reed-Prentice Company; he worked with Joseph Savage for two months, and was working with him on the day he was killed. They were unloading a car that was placed on the siding at the end of the spur track, and had it partly unloaded; they had been at work about two hours when it was necessary for one of them to go to the tool house to get a shovel, so the Greek went. When he came back he found Savage lying by the side of the track; it was about five or six minutes between the time he left the car and when he found him dead. On cross-examination he stated that Savage was in the car when he left to go to the tool house.

It appeared in evidence that this spur track ran parallel with the main track to Boston, and the tracks were 8 feet away;

that the spur track was about a foot lower than the main track, and that there was a depression in the ground between the tracks which arose from the spur track to the main track, so that there was a total difference of about 2 feet from the top of the rail on the main track to the top of the rail on the spur track.

Myron A. Trowbridge, the engineer in charge of the train which struck the employee, stated that he first saw Savage when he was about 200 feet away; that his vision was more or less obscured because of steam which was blowing from the direction of the spur track to the main track, and when he first saw Savage he was coming up on to the main track. He then turned around and stood looking at the freight car. The train was going at the rate of from 20 to 25 miles an hour, and the man when he first saw him was not over 200 or 250 feet away. He whistled and put on his brakes, but he could not get his train under control and the man was struck and killed.

There was no evidence offered as to why Savage left the car in which he was at work and walked up to the main track in front of the express train. There was apparently nothing to call him, so far as anything appeared in evidence, to be at that point. There was nothing, so far as any evidence appeared, that would require his position at that point. He was unloading the car on the opposite side of the spur track, and the one errand which necessitated anybody leaving the freight car was being performed by his companion. There was an ample walk to the tool house some 360 feet away at the right of the spur track and on the opposite side of the spur track from the main track, which, if this man had been going to the tool house, he naturally would have taken.

There was nothing in his employment that called for him to be in the place that he was in at the time that he met his death, and we find that the widow is not entitled to recover compensation because he did not meet with an injury arising out of and in the course of his employment.

DUDLEY M. HOLMAN.
EDWIN H. CRANDELL.

James C. Donnelly dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, May 13, 1915, at 2 P.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows and the Board finds that the employee, Joseph W. Savage, did not receive a personal injury arising out of and in the course of his employment; that his death occurred by reason of his unexplained absence from the car which he was engaged in unloading; that his presence on the railroad track was unnecessary under the circumstances, and subjected him to the needless risk of injury from moving railroad trains; and that, therefore, the widow, Eva Savage, is not entitled to compensation under the statute.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

Decree of Supreme Judicial Court on Appeal.

CARROLL, J. Under the Workmen's Compensation Act, the findings of the Industrial Accident Board are equivalent to the verdict of a jury or the findings of a judge, and are not to be set aside, if there is any evidence to support them. (Pigeon's Case, 216 Mass. 51; Diaz's Case, 217 Mass. 36.)

The Industrial Accident Board has found that "the employee, Joseph W. Savage, did not receive a personal injury arising out of and in the course of his employment; that his death occurred by reason of his unexplained absence from the car which he was engaged in unloading; that his presence on the railroad track was unnecessary under the circumstances

and subjected him to a needless risk of injury from moving railroad trains; and that, therefore, the widow, Eva Savage, is not entitled to compensation under the statute."

There was evidence to support this finding. The employee was at work in a car on a spur track, eight feet away from the main line of the Boston & Albany Railroad. This spur track was about four inches below the main line. For some unexplained reason he left the car and went upon one of the main tracks of the railroad, where he was struck by an engine and killed. There was no evidence showing it to be any part of his employment to cross the main track; nor was there any evidence tending to show why he was there. The plaintiff is not entitled to recover under this statute unless the injury arose out of and in the course of her husband's employment: and to establish these facts the burden of proof rests upon her. It is not enough "to show a state of facts which is equally consistent with no right of compensation as it is with such right." There being no evidence to show that the fatality was caused by her husband's employment, or that it occurred while he was engaged therein, she cannot recover. (Sponatski's Case, 220 Mass. 527, 528; King's Case, 220 Mass. 290; Fumiciello's Case, 219 Mass. 488.)

Decree affirmed.

CASE No. 1693.

ROBERT G. ELLIS, *Employee.*
BIDDLE & SMART COMPANY, LTD., *Employer.*
LONDON GUARANTEE AND ACCIDENT COMPANY, LTD., *Insurer.*

ARISING OUT OF THE EMPLOYMENT. OCCUPATIONAL DISEASE. SCIATIC NEURITIS. ACCELERATION OF PRE-EXISTING CONDITION. EMPLOYEE WAS EXPOSED TO DANGER OF WETTING AND CHILLING BY WET AND DAMP CONDITION OF FLOOR. THIS CONDITION CONTRIBUTED TO INCAPACITY FROM SCIATIC NEURITIS. COMPENSATION AWARDED.

The employee was a varnish rubber and was engaged in washing automobile bodies, the surfaces of which were being rubbed down. The water was taken from a faucet which stood in the middle of a concrete area, and at times as much as an inch of water in depth was standing in the region near the faucet, where the claimant worked. The employee was exposed to this wet and damp condition at a time when he was run down physically, due to malnutrition and the

infected condition in his teeth and gums. The medical evidence shows that this exposure was a contributing factor and cause of the sciatic neuritis in his left leg.

Held, that the employee was entitled to compensation.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Review of weekly payments before the Industrial Accident Board.

Decision. — The Industrial Accident Board finds that incapacity ceased on a definite date.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Robert G. Ellis *v.* London Guarantee and Accident Company, Ltd., this being case No. 1693 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Fred A. Brown, representing the employee, and Charles F. Pettingill, representing the insurer, heard the parties and their witnesses in the Court Room, Town Hall, Amesbury, Mass., on Monday, April 12, 1915, at 10.45 A.M.

Martin F. Connelly appeared as counsel for the employee, and H. S. Avery appeared as counsel for the insurer.

The question in this case was whether a condition of sciatic neuritis in the left leg was an occupational injury sustained by the employee in the course of and arising out of his employment.

Robert G. Ellis, the employee, testified substantially as follows: That he worked for Biddle & Smart Company about six weeks before he left; that he left Oct. 22, 1914, because of the pain in the calf of his left leg; that his work during these six weeks was rubbing varnish on automobile bodies; that this work was done on a concrete deck; that this concrete deck was large enough to hold four automobile bodies; that at times sixteen men worked on this deck and at other times only twelve; that this deck was situated on the third floor and there was another deck on the fourth floor; that his work consisted of rubbing the bodies of the automobiles with a wet sponge on which there was pulverized pumice stone; that at times the bodies of the automobiles were washed off several times before

the final washing, to see that the marks were all taken off; that at the final washing three or four pails of water were used; that the concrete deck sloped slightly towards the center, where a faucet and drain were situated; that the deck did not slope enough, and the water did not run off the deck into the drain readily; that after the final washing off of the automobiles it was necessary to take a broom and sweep the water into the drain; that this drain got clogged up three or four times during the period he was working there; that twice it was clogged up so badly that he had to stand on boards; that at these times there was about an inch of water in depth on the floor; that this clogging of the drain lasted about ten minutes at one time and about thirty minutes another time; that water also came down from the deck above him; that he worked right near the faucet and the drain; that the floor of the deck was always wet; that when he first went to work at this place he bought a new pair of shoes: that when he got home from work at night his feet were always cold and damp: that the soles of his shoes were wet and mushy: that he felt this pain in his leg about three or four days before he stopped work; that he rubbed his leg with liniment and bandaged it; that some time during the week that he left, the drain was stopped up for about half an hour, and there was water an inch in depth on the floor of the concrete deck and he had to stand on a board at this time; that he left work October 22, and went to see Dr. Mullen; that the pain in his left leg was so great that he called Dr. Mullen the next day; that he was in bed for a week at this time; that he had another severe attack in November, when he was obliged to remain in bed for a week; that he had a third attack in December, and at that time he was in bed for ten days, and was not able to leave his house for six or seven weeks; that at the present time he feels a burning sensation in his hip, and in the morning when he gets out of bed his leg is stiff; that he feels weak and is not able to do a full day's work; that he has done some work during the last two weeks, earning about $15.

Dr. Peter J. Mullen, called by the employee, testified that the employee came to his office some time in October, and complained of severe pain in his left leg; that he told the employee

to go home and go to bed, and ordered the application of ice to his leg; that this treatment did not seem to relieve the pain, so he changed the treatment to hot applications; that he called to see him the next day; that the pain extended from the hip down to the heel along the sciatic nerve; that there was severe pain in the calf of his leg and above the knee; that he was suffering from neuritis; that he treated him at three different periods for this same trouble; that neuritis may be due to syphilis, hemorrhoid, sepsis, trauma, strain and cold and dampness; that there are a great many other causes of neuritis; that dampness and cold are the principal causes of neuritis; that in going into the history of the case he excluded everything as the cause of the disease with the exception of the cold and dampness; that in his opinion the cause of the neuritis in this case was the man's occupation, — working on a wet floor and continually getting his feet damp and cold.

The report of Dr. William R. Woodbury, appointed as an impartial physician, of which the following is a copy, was received in evidence: —

Claimant. Forty-three years old. Married. Carriage painter. Wood worker.

Claim. — Contracted neuritis while working on a wet floor. Claimant was reported unable to leave his house, and he was seen by me at his home on Friday, Jan. 28, 1915.

For six weeks previous to his sickness he worked at varnish rubbing. He was taken sick Oct. 22, 1914, and confined to his bed ten days. On November 15 he went to bed a second time for seven days, and was in bed a third time for about ten days, dating from December 24, and has been confined to the house since Christmas.

On Nov. 24, 1914, reported to his employers that he had a doctor and his sickness.

Claimant said: "I have not been in bed from sickness for twenty years, and during the six weeks' work at rubbing varnish I was working in water." He worked on a cement stage (which I have seen and which is drained). He was working at the same employment and using in his work a pail of water in which a sponge is dipped as need demands, and then rubbing the varnished bodies of automobiles with pumice stone on a piece of felt.

Physical Examination. — Pain and tenderness in left leg; pain increased by movement. Well-developed and nourished. Chest and heart normal. General physical condition only fair. Bowels reported regular until present illness. Not using alcohol except an occasional beer or ale. Mouth in bad condition; some of his teeth have loosened and come out, and pus in sockets of teeth.

Diagnosis. — Neuritis. Recovery retarded by his physical condition.

Opinion. — His present condition did not arise out of his employment. Man in good physical condition, exercising ordinary care, could not contract his condition as he claims.

WILLIAM R. WOODBURY, M.D.

JAN. 30, 1915.

Dr. William R. Woodbury, on being called as a witness, testified substantially as follows: That this man was in poor physical condition; that he had an infection of the mouth and teeth; that this infection from the teeth is absorbed in the blood, and through the blood gets into the system; that this infection in the system would make his nutrition poor; that with a man in this condition exposure to water and cold would be sufficient to cause neuritis; that in his opinion the dampness and cold in this case was a contributing factor in causing the neuritis; that a man in a run-down condition would be more apt to contract neuritis from exposure to water and cold than a man in good physical condition; that in view of the fact that there was exposure, he would modify his opinion as given in his report.

The committee finds from the weight of the evidence as follows: That the claimant was employed as a varnish rubber for said employer for a period of about six weeks prior to Oct. 22, 1914; that in doing this work he and others in the same employment used water in washing the automobile bodies, the surfaces of which were being rubbed down; that the water was taken from a faucet which stood in about the middle of a concrete area about 30 feet long by 15 feet square; that sometimes the claimant worked on said area with as many as sixteen men at a time who were doing the same kind of work; that the water was drawn from the faucet in pails, and the men used it for washing the vehicles mainly with a sponge; that the concrete flooring sloped towards a point in the center near the faucet, so that it formed somewhat of a shallow basin, and at times as much as an inch of water in depth was standing in the region near the faucet where the claimant worked; that this would happen when quite a number of men were working at the same time on the concrete, and when the drainpipe in the floor, which carried off the water, for some reason got

stopped, which occasionally happened; that at such times when the pipe was stopped, and the water was about 1 inch deep near the faucet, the men would place boards upon which they would stand while working, in order to keep out of the water; that when the drainpipe was stopped the boards were laid aside and not used, but when a number of men were working the concrete area would continue moist and wet with the drippings of water from the pails and sponges, even when the drainpipe was unobstructed; that much of the time before Oct. 22, 1914, the claimant was exposed to this wet and damp condition of said floor, and a few days before Oct. 22, 1914, the water had accumulated during the course of one half hour to the depth of 1 inch, when the claimant stood on the board or boards at his work; that this depth of water happened two or three other times while he was working, but the drain outlet was cleared in from ten to thirty minutes; that the plaintiff wore leather shoes, the soles of which at times, by reason of the water and wet surface of the floor, became soft and mushy, and his feet were cold at the end of the day's work; that the plaintiff was obliged to stop working on Oct. 22, 1914, by reason of a condition of sciatic neuritis developing in his left leg, causing much pain and incapacitating him for work; that three or four days before he stopped work the sciatic pain in the leg first appeared; that he was incapacitated thereby until March 29, 1915, when he earned $7.50 per week for a period of two weeks for some painting work which he did on his own account.

The committee finds that the claimant, while he was exposed to the wet feet and chill of this water, was in a run-down physical condition due to malnutrition and infected condition in the teeth and gums, and that said exposure while working on the wet and damp floor, chilling his feet, was a contributing factor and cause of the sciatic neuritis in his left leg and his being incapacitated thereby on Oct. 22, 1914, and that he thereby received an injury arising out of and in the course of his employment; that he continued to be wholly incapacitated for work thereby to March 29, 1915, since which date he has been partially incapacitated and has had an earning capacity of $7.50 per week.

The committee finds that his average weekly wages at the

time of receiving said injury and incapacity was $15, and he is, therefore, entitled to compensation at the rate of $10 per week from Nov. 5, 1914, the fifteenth day after Oct. 22, 1914, the date of said injury, to March 29, 1915, a period of twenty and four-sevenths weeks, amounting to $205.71; that he is also entitled to a partial compensation of $5 per week for partial incapacity from March 29, 1915, to April 12, 1915, the date of the hearing, a period of two weeks, amounting to $10, said total and partial compensation aggregating $215.71; and that said compensation for partial incapacity shall continue during its existence, to be decided later by the Board. In the opinion of the committee, based upon the evidence, said partial incapacity will disappear in the course of four weeks from this date, and the claimant then will be able to do such work as he formerly did for his occupation, his general occupation having been that of a painter, he having worked as a varnish rubber only about six weeks.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

David T. Dickinson.
Fred A. Brown.
Charles F. Pettingill.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, May 13, 1915, at 3 P.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows and the Board finds that the employee, Robert G. Ellis, received a personal injury arising out of and in the course of his employment which aggravated and accelerated a previously diseased condition of sciatic neuritis, totally incapacitating the employee for work from Oct. 22, 1914, to March 29, 1915, at which latter date his incapacity for work became partial. The employee earned an average weekly wage of $7.50 from said March 29, 1915, to April 12, 1915, the compensation due thereafter to be computed in accordance with the requirements of the statute.

The Board finds that there is due the employee, therefore, a total payment of $215.71, to April 12, 1915, future payments to be made on the basis of the future earning capacity of the employee in so far as such earning capacity is affected by incapacity for work due to the injury.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

Findings and Decision of the Industrial Accident Board on Review of Weekly Payments.

The claim for review under Part III., section 12, having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Sept. 21, 1916, at 10.30 A.M., and find and decide as follows: —

Appearances: Martin F. Connolly, for the employee; H. S. Avery, for the insurer.

The sole question before the Board was whether or not the employee was entitled to compensation on account of incapacity for work, due to the injury, after May 17, 1915.

All the material evidence before the Board follows: —

Robert G. Ellis, the employee, testified that he returned to work on May 17, 1915, for the Wentworth Body Company, as a painter. The work which he performed did not require the use of water. He stated that the pay roll of his employers showed that beginning in December, 1915, he worked as follows:

December, six days; January, five days; February, nine and one-half days; and March, eleven and one-half days. It was his custom to take nearly every Saturday afternoon off and sometimes days in the middle of each week, because he was not feeling well. After March 21 he did not work until Aug. 17, 1916, and since that date has averaged only three days a week, doing odd jobs at outside work. He has done no work at his former occupation. He stated that he has been in a very nervous condition since his return to work; that his stomach bothered him; that he was subject to nervous spells; and that he had not fully recovered when he returned to work on May 17. He had his teeth fixed in July of last year; had no trouble with them since the hearing before the committee of arbitration on April 12, 1915; and stated that during the summer he was bothered with neuritis, particularly on damp days, and when he stooped. He was treated by Dr. Mullen prior to April, 1916, and thereafter by Dr. Mudge. The latter washed out his stomach, after which he first began to improve. The employee thought that his nerves were at the bottom of his trouble.

Dr. Otis F. Mudge testified that he first treated the employee on April 2, 1916, and that his examination was practically negative. He called the condition neurasthenia, possibly a little remnant of his neuritis, as the employee complained of pain around the waist and in his legs. He saw Ellis about ten days ago; his condition was improved and is still improving. Dr. Mudge considered that the nervous depression was a consequence of the attack of neuritis. He found nothing wrong organically with the stomach. He thinks that the condition of the employee was a result of his lack of work, lack of occupation, and the pain which had been there.

The impartial reports of Dr. William J. Daly and Dr. Cadis Phipps were offered in evidence.

Dr. William J. Daly examined the employee on July 13, 1916, and stated that —

> Mr. Ellis shows a case of neurasthenia gastrointestinalis.
>
> There are no objective signs of sciatica or other neuritis.
>
> It is recommended: (1) that the gastric contents be analyzed to show normality; (2) that he be put to light work.

Dr. Cadis Phipps examined the employee on Aug. 2, 1916, and expressed his opinion as follows: —

The man has probably had sciatica which may very well have been caused by his occupation (standing in water), but he shows no evidence of it now. His stomach is apparently normal now, and his previous symptoms referable to it may very well have been due to his poor teeth. The only trouble I can find now is his mental condition, which is apparently a form of melancholia. I can see no relation between his work at Biddle & Smart's and the symptoms of which he complained after returning to work on May 17, 1915. He is getting proper treatment. I feel that work would be very beneficial to him, especially as it might relieve his mental condition.

The Board find and decide, upon all the evidence, that the employee has not been incapacitated for work by reason of conditions due to the injury of Oct. 22, 1914, since May 17, 1915, the date upon which the insured last paid compensation, and that all incapacity for work due to the injury ceased on or before May 17, 1915.

FRANK J. DONAHUE.
DAVID T. DICKINSON.
THOMAS F. BOYLE.
CHESTER E. GLEASON.

CASE No. 1709.

JAMES FORD, *Employee.*
WILLIAM H. MAGUE, SUBCONTRACTOR FOR CITY OF NEWTON, *Employer.*

ELECTION OF REMEDIES. "PROCEED AT LAW." EMPLOYEE WHO ELECTS TO ACCEPT DAMAGES FROM THIRD PARTY HAS PROCEEDED AT LAW UNDER THE STATUTE. CLAIM DISMISSED.

The sole question before the committee was whether or not the claimant had proceeded at law within the meaning of Part III., section 15, of the Workmen's Compensation Act. The employee was engaged by an independent contractor to perform certain work under his contract with the city of Newton. While engaged in this work he sustained an injury. Later he brought suit against the independent contractor, and made a settlement with him through his attorney. The writ which had been served was endorsed, "discharged and canceled," a notation being made thereon that the reason for the discharge and cancellation was that the action at law had been "settled." Thereafter the employee filed a claim against the city of Newton, under the Workmen's Compensation Act.

Held, that the employee had elected to proceed at law under the statute; and that he had no claim under the Workmen's Compensation Act.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of James Ford *v.* City of Newton, this being case No. 1709 on the files of the Industrial Accident Board, reports as follows: —

The arbitration committee, consisting of Thomas F. Boyle of the Industrial Accident Board, chairman, Maurice S. Perlmutter, representing the employee, and John H. Gordon, representing the city of Newton, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Newton, Mass., on Wednesday, April 14, 1915, at 2 P.M.

Elias B. Bishop appeared as counsel for the city of Newton. The employee was without counsel.

The only question in this case is whether the employee still retains his rights under the Workmen's Compensation Act, having accepted a sum of money from William H. Mague, the subcontractor.

James Ford testified: —

On Oct. 29, 1914, at about half past 11, I was going out on the team to do my afternoon's work, when the horse let go and kicked me seven times. The wagon is covered on the top, and I fell back on top of it. I had to lie on the wagon for about an hour before I could move. I was sitting on the wagon when the horse kicked up behind. I did not get off the team at all, but waited until the horse got to the barn. The very night I got hurt I called in Dr. Baker, and he told me that I had a pretty bad foot. There were no bones broken, however. I have been laid up for eleven weeks. I had Dr. Baker a couple of times and Dr. Lowe once, and besides, I attended the Relief Hospital in Boston. When I was able to go out I went to the Relief Hospital. I did not try to go back to work for eleven weeks. I met Mr. Jarvis down in the square at Newton some time in January, and I told him about my accident. He told me that he thought I ought to bring suit against Mr. Mague, and later he told me he brought suit against this man. He went ahead and settled the case before I knew it. I did not tell him to settle the case, but told him to fix it up. I thought that the $15 I got was a part settlement. Mr. Jarvis told me he got $25 and I had to take $15. I told him that I expected to get more money than that. I have not seen Mr. Jarvis since I received this money.

Dr. David E. Baker testified: —

On Oct. 31, 1914, Mr. Ford came to my office with a bruise on his shin, so I put on an antiseptic dressing. I did not see him again. In my opinion it would take about a week to heal, but he might be limp longer. I think at the end of two weeks he should have been able to go back to work. I should be very much surprised to find this man lame for eleven weeks. I should think a man might be lame for a week or ten days from a bruise like this one, but the lameness ought to gradually leave him after that. This lameness might be a handicap to him, but I should be inclined to doubt the fact that it would cause him total disability for more than a fortnight.

The evidence shows that the employee, James Ford, proceeded at law under section 15, Part III. of the Workmen's Compensation Act, serving a writ of attachment against his direct employer, William H. Mague, the independent contractor, who agreed with the city of Newton to collect and dispose of its garbage, said writ being entered in court by William C. Dillingham, clerk, at Cambridge, Mass., on Jan. 16, 1915. The writ was "discharged and canceled" by Henry W. Jarvis, the attorney who brought same, in behalf of the employee, James Ford, the notation being made thereon that the reason for the cancellation was that said action had been "settled." The settlement made between the attorney for the employee and Mague was the payment of $30, the employee receiving $15 from his attorney and the latter retaining the balance as his fee and in payment of the expenses incurred in connection with the case.

The committee finds, upon all the evidence, that the employee, James Ford, having proceeded at law and settled his claim, as provided by Part III., section 15, of the statute, thereby making an election, is not entitled to compensation under the Workmen's Compensation Act. His claim is, therefore, dismissed.

THOMAS F. BOYLE.
JOHN H. GORDON.
MAURICE S. PERLMUTTER.

CASE No. 1711.

SIEBOLT STAM, *Employee.*
THOMAS G. PLANT COMPANY, *Employer.*
MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. OCCUPATIONAL DISEASE. CHAIN OF CAUSATION. TUBERCULOSIS. DISEASE WHICH INCAPACITATED EMPLOYEE NOT ATTRIBUTABLE TO CONDITIONS PECULIAR TO HIS EMPLOYMENT.

The employee was incapacitated for work by reason of a condition of tuberculosis for which he claimed compensation, alleging that the disease had a causal relation to the conditions under which he was obliged to perform his work. A committee of arbitration inspected the place where he was employed, and found that it was well lighted and ventilated, and that the conditions under which he was obliged to perform his work were very nearly ideal.

Held, that the employee was not entitled to compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Siebolt Stam *v.* Massachusetts Employees Insurance Association, this being case No. 1711 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, representing the Industrial Accident Board, chairman, John P. Meade, representing the employee, and Abraham E. Pinanski, representing the insurer, heard the parties and their witnesses in the Hearing Room, New Albion Building, Boston, Mass., on Wednesday, April 14, 1915, at 2 P.M.

John W. Cronin represented the insurer.

The sole question at issue in this case is whether or not the employee, Siebolt Stam, is incapacitated for work by reason of a condition of tuberculosis having a causal relation with a personal injury arising out of and in the course of his employment. The claim of the employee was that the conditions under which he was obliged to perform his work brought on tuberculosis, and the insurer denied the claim. The average weekly wages of the employee at the time of the injury were $12.13.

Siebolt Stam, the employee, testified that last November,

1914, he worked in the treeing department of the Thomas G. Plant Company, where he had worked off and on previously, at times working for Rice & Hutchins, and then for Plant. The room in which he worked was very hot, the temperature being between 86° and 90°. All the fellows were kicking and wanted the windows open. The foreman said that the first fellow who opened the windows would be fired, so some of the men got together and wrote a letter to the board of health. In a short time a lady came to the factory and examined the room. After that things were all right and every one seemed satisfied. About two days after Christmas he did not feel well, as he had a dry cough, together with headache and chills. He continued working until the 9th of January, when he asked to go home. Just before he asked to go home the foreman brought him a case of shoes which he found fault with, and they both had some trouble, as a result of which the foreman told him to pick up his tools and go home. Another one of the men told him to continue working, but as he did not feel good he went home. As he was leaving the office he spoke to Mr. Drake about not feeling well. He remained in bed two or three days and then went to the Peter Bent Brigham Hospital, where he was X-rayed and informed that he had tuberculosis. Dr. Christian told him that he had bronchitis, a trace of pneumonia, and that probably the work in a dusty room caused the dust to collect in his lungs. In his work they also used a preparation, No. 162, to clean the cloth tops of shoes when they were soiled, and this preparation made him very sick to his stomach, so that he could not eat his lunch after using it. He had not used it for more than a week.

Dr. Eugene J. McCarthy, inspector for the Board of Labor and Industries, testified that he examined the conditions at the Thomas G. Plant Company and made out a report which he read. He stated that the benzol used was a kidney and respiratory irritant, but otherwise the conditions at the plant could not be improved upon in any sanitary way. He further stated that he had to get very close to the irons in order to smell the benzol from them. Some of the employees informed him that they took it upon themselves to open the ventilators to air the room when it was too close.

Fred L. Richardson, who up to a short time ago had charge of the treeing department where Mr. Stam worked, testified that the room in question was on the west side of the factory, and was a pretty hard room to heat in the winter time, as they endeavored to keep the factory at 70° all the time. This winter they had to put in additional hot-air pipes so as to be able to keep the room at an even temperature. Some of the men complained of the windows being open, and others wanted them open. He had the windows opened at times in order to air the room, but in the winter time they were not opened, as the cold air cracked the patent leather and spoiled the products. The only time the benzol, a solution made by him, was used was in the fall for a short time, when they had a number of real light cloth-top shoes which had been stained or soiled and had to be cleaned. The men were given a small quantity at a time to use, — about 20 gallons were used among 25 men. Mr. Stam had got through several times on account of little runnings, but as he was a good workman he was hired the last time. He was an extremely high-strung, nervous chap and always seemed to think that the other fellow had something in for him, and whenever he was corrected in regard to his work he felt hurt, and showed that he felt badly about it.

The committee of arbitration made a special and unannounced visit of inspection to the place of employment of Stam on Friday, May 7, 1915, and found conditions such as described in the testimony of Mr. Richardson. The room in which the employee worked was well lighted and well ventilated. In the opinion of the committee the conditions under which the employees were required to perform their work were very nearly, if not quite, ideal.

The evidence shows and the committee finds that the employee, Siebolt Stam, is not incapacitated for work by reason of conditions peculiar to or attributable to his employment, there being no causal relation between the tuberculosis process which disables him and a personal injury arising out of and in the course of his employment. The claim for compensation is dismissed.

JOSEPH A. PARKS.
JOHN P. MEADE.
ABRAHAM E. PINANSKI.

CASE NO. 1720.

CHARLES ORTEL, *Employee.*
UNITED STATES BUNTING COMPANY. *Employer.*
AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

REASONABLE MEDICAL SERVICES. EMPLOYER SENT BOY TO HOSPITAL. LATER GOES TO OWN PHYSICIAN. INSURER NOT LIABLE FOR BILL OF LATTER.

The employee sustained a lacerated wound of hand in the course of his employment, and was sent to hospital for treatment. His mother refused to allow him to return for further treatment, and he thereafter went to his family physician. She had objections to the hospital, but what they were she did not state.

Held, that insurer furnished reasonable medical services.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Charles Ortel *v.* American Mutual Liability Insurance Company, this being case No. 1720 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, Joseph P. Kearney, representing the employee, and G. Hawthorne Perkins, representing the insurer, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Lowell, Mass., Friday, April 23, 1915, at 10.30 A.M.

George W. Kenney appeared as counsel for the insurer.

The employee, while at work for the United States Bunting Company Nov. 4, 1914, was putting the sprocket chain on a "carding" machine when his hand slipped and was caught between the dividers. The thumb, index and middle fingers were bruised and lacerated. Compensation at the rate of $5.76 a week was paid up to and including Jan. 17, 1915. The questions were as to the duration of incapacity and the liability of the insurer for medical services in the amount of $22 incurred by the employee.

The evidence was that the employer sent the injured em-

ployee to St. John's Hospital at the time of the injury. He was treated there and told to return, but his mother having objections to the hospital he thereafter went to his family physician for treatment. He expressed his mother's objections the next day to the assistant superintendent of the company, and the latter told him that if he was treated outside the hospital he would very likely have to pay the bill himself. Two or three days later his foreman told him he would have to pay the bill himself if he went to his own doctor. The United States Bunting Company ordinarily allows employees to make their own choice of physicians, and Ortel could have had his own doctor if he had expressed a preference at the time of the injury.

He went back to work at noon January 18 at the request of the physician of the company that he attempt light work, and was put to work bagging wool. Sepsis had developed, and it was the opinion of his own physician that he should not attempt work then. Although the work he was given did not involve the full use of the injured member, he found that it caused his hand a great deal of pain. He kept at the work, however, until he was let go at noon on January 20 because of slackness of work. He endeavored to find employment at several places, but found none until he was again taken back by the United States Bunting Company on February 17, and given an elevator to run. He remained four days and then found another job.

The committee of arbitration finds that the insurer furnished reasonable medical services at the time of the injury, and was ready to continue to furnish them but they were declined by the employee, and that therefore the employee is not entitled to payment for the medical bill which was incurred upon his own responsibility. The committee further finds that on account of his injury Ortel was unable to earn any wages between noon of January 20 and February 17, and is entitled to compensation at the rate of $5.76 per week during that period. Under this finding there is due the employee $22.63.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the

facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

FRANK J. DONAHUE.
G. HAWTHORNE PERKINS.
JOSEPH P. KEARNEY.

CASE No. 1725.

PAUL PAAKONEN, *Employee.*
ROCKPORT GRANITE COMPANY, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

ARISING OUT OF THE EMPLOYMENT. ABILITY TO EARN. SACROILIAC STRAIN. EMPLOYEE WAS ENGAGED IN ROLLING HEAVY GRANITE SLABS. SUSTAINS A STRAIN. COMPENSATION AWARDED.

The employee was engaged in rolling granite slabs into a shop, and while so employed felt a strain of the muscles in the lower part of the back and was obliged to give up work. This proved to be a back strain of the sacroiliac region, and he was incapacitated for work for a period of about six months.

Held, that the injury arose out of the employment.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Paul Paakonen *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1725 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, J. Alfred Anderson, representing the employee, and W. Lloyd Allen, representing the insurer, after being duly sworn, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Gloucester, Mass., on Friday, April 23, 1915, at 11 A.M.

John M. Morrison appeared as counsel for insurer.

This employee, a man fifty-three years of age, on Nov. 2, 1914, received an injury arising out of and in the course of his employment. His average weekly wages were $14.50. He was

working at the time at rolling granite slabs into a shed, and was suddenly taken with a pain in his back, which rendered him incapable of performing any more work.

The question raised was whether or not there was any injury arising out of and in the course of his employment.

Paul Paakonen testified substantially as follows: That on Monday, Nov. 2, 1914, he went to work as usual in the morning; that it was cloudy and commenced to rain a little, so that he was obliged to hasten with his work. He was engaged at this time in rolling granite slabs into a shed, and had started to roll the third one, which weighed about 250 pounds, when he felt something like a cut in his back, and was unable to move the stone any further. He was obliged to give up work at 10 o'clock that morning and go home. Before he left work he told a fellow workman that he had injured his back, and he advised him to apply some liniment to it. He went to a doctor two days after he left work, who gave him some tablets and liniment, and thought he would be able to return to work the following week. He returned to work three or four days after he came home, but found he could not use the big sledge hammer, so the blacksmith gave him some hand drills. He commenced working very slowly, but felt pain in his back; the longer he worked the more pain he felt. He was obliged to sit down and rest while working. He worked for eight or nine days and then left on about Nov. 14, 1914, as he felt pain and soreness in his back, and also pain in the leg. He has performed no work since the fifteenth day after his injury. He stated to the committee that he was feeling better now and ready to go to work, but that he would have to start slowly because of his inability to lift with his usual strength: that he had tried to remove some storm windows from his house, and felt pain in his back while performing this work.

Dr. Hanford Carver testified substantially as follows: That the claimant came to his office and consulted him about a lame back some time in November, 1914; that he complained of his back being sore and that he had injured it a few days ago. He prescribed for him, and from his symptoms and general appearance he diagnosed the case as rheumatism. He gave him anti-rheumatic treatment which seemed to benefit him.

He called at the claimant's house Dec. 13 and found him in bed complaining of a great deal of pain in his back and side. He called the next day and found him very much improved, and on the 16th he seemed to be progressing. He heard no more from him until he received a letter from his son with the hospital statement enclosed. He considered that there would be very little difference between a back strain of the sacroiliac region and the symptoms of rheumatism. He gave him asperin which is used for a muscular pain, and he thought that if he had much of a strain there would not be much pain when he was at rest, but rather more when he exerted himself; rheumatism was a very difficult thing to cope with. He stated that with most of the muscular back troubles a person would have more or less irritation through an involvement of the sacroiliac-sciatic nerve; that rheumatism often approached a weak spot if a person had one, thereby making one more susceptible to it.

The report of Dr. Francis D. Donoghue, who was appointed by the Board as impartial physician to examine the employee, was received in evidence.

In this case there is no disability existing now, but I should say disability continued up to the present time on the story of the condition found at the Massachusetts General Hospital, namely, a strain in some degree of the back in which the muscles are getting flabby as the result of the man getting older.

It is possible he might have been able to go to work a month earlier, and it is possible he may be disabled so that he cannot do his full amount for another month after making an attempt; perhaps a reasonable balance to strike would be to consider him well at the present time and let him make his best effort.

FRANCIS D. DONOGHUE, M.D.

The claimant was admitted as an out patient at the Massachusetts General Hospital on Dec. 28, 1914, and is receiving treatment at the present time.

Patrick Ahearn testified substantially as follows: That he was a fellow worker with the claimant in the same line of work, and remembered the day when it was showery in the morning, which was the day the man stopped work; that he worked after this off and on, and then later laid off for good. He did not remember the claimant speaking of suffering from any

strain of his back on the first day he quit work, but he remembered his rolling the slabs the same as all the men did on that day. He suggested to him that possibly he dropped a stitch in his back as he, the witness, had had this happen to him on many occasions. The claimant told him that there was something the matter with his back, as it was sore. The witness noticed that he was not working the same as he had previous to this time.

John Angelo testified substantially as follows: That he was drill man and worked with the claimant; that he remembered his going home at 3 o'clock on the day he quit work. He was unable to tell how many days he had remained at home, but he seemed to feel better. The claimant told him that his back had been sore, and that he, the witness, advised him to take his time and work easily.

The committee finds that on Nov. 2, 1914, the employee received an injury arising out of and in the course of his employment. His average weekly wages were $14.50. At the time of the injury he was lifting and rolling a slab of granite weighing about 250 pounds, end from end, and that while so doing he received a strain or wrench in the back, injuring the muscles in the lower part of the back. The committee finds that he has been wholly incapacitated for labor by reason of said injury from Nov. 2, 1914, the date when he received it, to April 23, 1915, the date of the hearing, when all incapacity ceased, and that he is therefore entitled to compensation for a period of twenty-two and four-sevenths weeks, being the time from Nov. 16, 1914, the fifteenth day after the injury, to April 23, 1915, the date of the hearing, at the rate of $9.67 per week, amounting to $218.27.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act, and the general provisions of said act and its amendments.

DAVID T. DICKINSON.
J. ALFRED ANDERSON.
W. LLOYD ALLEN.

CASE No. 1742.

MATHEW MARENO, *Employee.*
J. C. FINEGAN COMPANY, *Employer.*
U. S. FIDELITY AND GUARANTY COMPANY, *Insurer.*

UNREASONABLE CONDUCT OF EMPLOYEE. INCAPACITY LENGTHENED. INSURER NOT LIABLE.

The employee spilled a pail of hot pitch on his hand and wrist on Dec. 12, 1914, and received compensation up to Feb. 1, 1915. He absolutely ignored advice of physician in regard to washing and bandaging wound. Evidence was that if he had followed advice his wounds would have been healed by January 16.

Held, that the employee is entitled to no further compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Mathew Mareno *v.* United States Fidelity and Guaranty Company, this being case No. 1742 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, Irving F. Carpenter, representing the insurer, and Henry Silva, representing the employee, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, New Albion Building, Boston, Mass., Saturday, May 8, 1915, at 10 A.M.

D. R. Pennell appeared as counsel for the insurer. The employee was unrepresented.

The employee was injured on Dec. 12, 1914, by falling while carrying a pail of hot pitch. The contents of the pail burned his hand and wrist. Compensation was paid up to and including February 1.

The evidence showed that the insurer continued medical treatment of the employee beyond the first two weeks after the injury, but that the employee between January 4 and February 3 absolutely ignored the instructions of the insurer's physician, failing to visit him when told to do so, and failing to follow

the directions of the physician in regard to washing and bandaging the wound. After February 3, when compensation had been stopped and the employee did follow the physician's directions, the wound completely healed in ten days.

Dr. S. K. Patten, the insurer's physician, testified that the wound was completely healed on February 13, and would have been completely healed and the employee would have been enabled to perform his work on January 16 if his directions had been followed.

Dr. William H. Ruddick, appointed as an impartial physician by the Board, examined the employee on February 19 and reported that "This man has fully recovered, and is able to work."

The committee of arbitration finds that any incapacity to earn wages existing beyond February 1 was due to the unreasonable conduct of the employee, and was not the result of the injury. The committee finds, therefore, that he is not entitled to compensation.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

FRANK J. DONAHUE.
IRVING F. CARPENTER.
HENRY SILVA.

CASE No. 1744.

DEPENDENTS OF WALTER S. CRIPPS (DECEASED), *Employee.*
HOTEL AND RAILROAD NEWS COMPANY, *Employer.*
TRAVELERS INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DEATH RESULTS FROM INJURY. CHAIN OF CAUSATION. DISEASE. DEATH OF EMPLOYEE DUE TO CEREBRAL HEMORRHAGE PRECEDING FALL. CLAIM DISMISSED.

The employee died from cerebral hemorrhage, or œdema of the brain, and it was claimed that his death had a causal relation with a personal injury arising out of his employment. The record shows that the decedent was at work at a table with other employees, counting papers, and that he fell to the floor "like a log." He sustained a slight scalp wound. The medical evidence showed that the cerebral hemorrhage preceded the fall, and that the effect of the fall was not of sufficient severity or force to aggravate the pre-existing condition which caused the fall.

Held, that the fatality did not arise out of the employment.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Dependents of Walter S. Cripps, deceased, *v.* Travelers Insurance Company, this being case No. 1744 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, representing the Industrial Accident Board, chairman, Joseph J. Murley, representing the dependents, and William C. Prout, representing the insurer, heard the parties and their witnesses at the Hearing Room, New Albion Building, Boston, Mass., on Wednesday, April 7, 1915, at 2 P.M.

Edward L. Maguire appeared for the employee's dependents, and L. C. Doyle appeared for the insurer.

The question at issue was whether or not the death of the employee from cerebral hemorrhage or œdema of the brain had any causal relation with a personal injury arising out of and in the course of his employment.

Dr. George B. Magrath, medical examiner, testified that he performed an autopsy in this case on March 1, 1915, which

disclosed œdema of the brain, cerebral hemorrhage, hypertrophy and dilatation of the heart, chronic endarteritis of the coronary arteries and chronic nephritis, as well as other conditions, upon which he based the opinion that death was due to œdema of the brain and hemorrhage, presumably spontaneous, of the cerebellum, associated with chronic nephritis and chronic endarteritis. He had made a diagnosis, immediately after the autopsy, which he had issued in the death certificate, enabling the undertaker to get the permit for burial, to the effect that the cause of death was hemorrhage, probably traumatic, of the cerebellum, presumably caused by a fall. But such diagnosis was made antecedent to his knowledge of the facts relative to the death; he had understood that the deceased had fallen off a wagon; and he had later amended his statement to the board of health for the city registry and revised his opinion as to the character of the hemorrhage when he had the facts in hand. He had based the first diagnosis on anatomical conditions alone, without reference to the history; he had been in doubt as to the character of the hemorrhage after the autopsy, but had said "probably traumatic." He had reported, on full information, that "evidence is lacking to prove this hemorrhage traumatic. The fall was from standing height only, and does not appear to have generated much force. The brain was free from contusion, such as should be associated with violence severe enough to cause hemorrhage in the place where it occurred. Pathological conditions existed in the form of chronic nephritis and chronic endarteritis predisposing a high blood pressure, a state favorable to the development of spontaneous cerebral hemorrhage." Some intercranial condition had caused the deceased to fall, either the œdema or the hemorrhage or both. When he went down his head encountered something which caused a scalp wound; the force that caused that wound was not sufficient to cause œdema of the brain.

George MacDonald, a clerk of the Haymarket Square Relief Station, presented the records in the case, showing that the employee was received at the Relief Station on Feb. 22, 1915; he could walk, but not alone, and was irrational and excited; "dilated pupils that react, right larger than left, much purposeless struggling. Over the upper middle portion of the occiput

there is a lacerated wound of scalp 1½ inches long. Patient became wildly demented while in bed; speaks no words, only inarticulate sounds." Morphine was administered. "Patient is said to have had a fit; he gave a cry, fell down, had a convulsion and became unconscious. Later, patient had a similar attack while in bed." February 26: "Patient in a serious condition for first forty-eight hours. Day after entrance had 103 temperature, pulse 120. Patient is comatose at times, with delirium requiring restraint and paraldehyde . . . still laboring under strong mental excitement." February 28: "Past two days has failed rapidly in spite of treatment and died." The diagnosis was "Septic wound, occiput; traumatic, intercranial injury; œdema of brain."

Alexander Cripps, father of the deceased, testified that the money that his son, Walter, earned supported the family before his death, except that $2.50 a week was obtained through the letting of a room. The son earned $12 or $13 a week, and if all of the money were needed he would give it to his mother, but as a general thing he gave $8 or $9. He had never had any fainting spells nor needed a doctor, and had appeared as usual when he went to work on February 22. Mr. Cripps stated that his own health did not permit him to work but three months in the last year; he had received $50 a month for seventy days' work just prior to Sept. 12, 1914, which was the last time he was able to work. He has had asthma and bronchitis for twenty-seven years, having to sit up sometimes four nights a week and losing sleep; he is a physical wreck, and he had not averaged three months a year in work for twenty years. Two sons, who have since married, contributed to the support of the family at that time; his wife also helped him, but she has not worked lately.

John Kelley, foreman of the return department of the Hotel and Railroad News Company, testified that he had just got up from his desk, and, looking about, saw Walter Cripps counting his papers; he did some work for a few minutes at the counter near the desk and then heard a crash, and looking across the counter saw the employee stretched on the floor. When he reached him they put him up on a table and began throwing water in his face; he "began to come to" after a little while,

and they noticed that there was some blood on Mr. Sullivan's hands. The employee did not seem to know anybody, and he was sent to the Relief Station. It appeared to Mr. Kelley that he had dropped suddenly. He had asked one of his men if there were any ropes on the floor where the employee fell, and he had been told that the floor was "perfectly clean."

Charles H. Sargent, a superintendent of the Hotel and Railroad News Company, testified that Dr. Magrath had called him over the telephone, inquiring concerning the employee's fall, and he had informed him that he was not in the building at the time. Dr. Magrath further inquired regarding the employee's "regularity, sobriety and general condition," and he told the doctor that, from what he had seen himself, the young man had been a very heavy drinker; he had only discovered it was so during the last six or eight weeks, and since then, he had been observing him regularly. Only the Friday before the 22d he had noticed a strong smell of liquor in his breath, and had called him into his office the next day and took him seriously to task for drinking. The young man admitted that he had been drinking strongly and would try to do better; he afterwards told Mr. Sargent that he had spoken to his mother regarding the reprimand. He had not lost a great deal of time from work, and so far as Mr. Sargent knew, during the time he was employed under him, he had not been away from work on account of drink.

John J. Sullivan, an employee of the Hotel and Railroad News Company, testified that he heard the crash of the employee's fall, and was the first to get to him, jumping over the tables to do so; he did not see him fall. He was frothing from the mouth, and Mr. Sullivan noticed blood on his hand after lifting him. He had noticed the employee just a moment before the crash came; he had been jesting with him, because he did not seem to be in a "joyful" mood; he had told him he had "better get on the job" for his own good. He did not notice any rope on the floor where the employee fell; there was rope under the table.

Joseph Meehan testified that he was working about 4 or 5 feet up on the other side of the table from the place where the employee was working; he could look right across and see him;

he saw him fall. He was counting 50 lots of papers, and fell right back straight "like a log." There was no rope on the floor where he fell.

Joseph Vogel testified that he came in contact with the employee two or three times a week, and had not noticed any signs of liquor about him at such times. He usually saw him in the morning.

The committee of arbitration finds, upon all the evidence, that there was no connection between the employment of the employee, Walter S. Cripps, and his death; that the cerebral hemorrhage or œdema of the brain preceded the fall; that the scalp wound was merely superficial and was caused by the contact of the employee's head with the floor; that the effect of the fall following the cerebral hemorrhage was not of sufficient severity or force to accelerate or aggravate any existing condition and cause death sooner than it would have resulted from the cerebral hemorrhage without the fall; and that therefore no compensation is due under the statute to the claimants, — the father and mother of the deceased.

JOSEPH A. PARKS.
JOSEPH J. MURLEY.
WILLIAM C. PROUT.

CASE NO. 1745.

JAMES BOBELL, *Employee.*
SPENCER WIRE COMPANY, *Employer.*
MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. CHAIN OF CAUSATION. EYE INJURY. DISEASE. OPTIC NERVE ATROPHY. SYPHILIS. HOT METAL ENTERS EYE. SUBSEQUENT CONDITION OF OPTIC ATROPHY DUE TO CONSTITUTIONAL CONDITIONS NOT RELATED TO INJURY. CLAIM DISMISSED.

The employee was dipping a ladle into hot metal and the metal spattered and entered his eye. He received treatment for the eye condition and was reported as improving, except for the dirt which got into it. Later, he was treated at the Eye Infirmary, where his condition was diagnosed as optic atrophy of both eyes. An examination indicated that he had a constitutional condition, indicative of syphilis. The later report from the Massachusetts State Infirmary stated that the ocular condition was attributable to syphilis.

Held, that the employee was not entitled to compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of James Bobell *v.* Massachusetts Employees Insurance Association, this being case No. 1745 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Thomas F. Boyle of the Industrial Accident Board, chairman, Charles F. Campbell, representing the employee, and Frederick A. Carroll, representing the insurer, heard the parties and their witnesses at Committee Room 30, City Hall, Worcester, Mass., on Tuesday, May 18, 1915, at 10 A.M.

John W. Cronin appeared for the insurer as counsel, the employee not being represented by counsel.

On May 6, 1914, the employee was about to dip the dross from his kettle, but his skimmer was cold and caused the zinc to spatter on his face. His average weekly wage was $13.50.

It is agreed that the employee met with an injury on May 6, 1914, arising out of and in the course of his employment.

The only question in the case is whether the blindness from which the employee is now suffering was caused by the accident of May 6, 1914.

The evidence shows that there was no immediate resulting disability for which he should be compensated. The condition of the eyes immediately following the accident is important in view of subsequent happening.

Dr. Claude J. Byrne testified: —

On May 6, 1914, within fifteen or twenty minutes after the accident, I treated this man. As I understood it, he was dipping the ladle in hot metal and the metal flew in his face. On examination the left upper lid was reddened, and at the center the lashes were destroyed with slight vegetable formation. The right upper lid was simply reddened. There were a few particles of metal on his face under the right and left eye, with a few like powder marks which were washed off. I told him to stay home from work a couple of days because it might affect his condition. He continued at work against my advice. This was on May 7. His condition was all right except that he persisted in rubbing his lids with dirty hands. On May 9 the condition was improving except for the dirt he got into it. The left lid was crusting and drying up on the 12th.

This testimony as to the immediate condition is borne out by the testimony of George Watson, who testified that Bobell reported to him immediately after the accident, and he examined him and found nothing at all in the eye.

Some months later his sight began to fail, and he went to see Dr. John J. Brennan, who states: —

The first time he came was after the accident but before he went to Tewksbury. I found he was developing optic atrophy. He came to me to find out about his condition and what the outcome would be. I told him the outlook was very poor for both eyes, and that eventually he would be blind. There was practically no difference in the eyes as I remember. He did see a trifle better with the right, but it did not amount to much. Both were in the same condition.

Dr. John Cutting Berry then saw him on Aug. 22, 1914, and testified: —

I found that he was absolutely blind in the left eye. In the right eye he had five-tenths of normal vision. Both eyes in their external appearance were normal. I could see no evidence of the eyes having been injured at that time. I at once knew that there must be some central trouble, so I examined the fundus of the eye with the ophthalmoscope. I found an Argyll Robertson pupil, indicating specific involvement of the optic nerve. I examined the patella, as they go hand in hand, and found an absence of the patella reflex, or knee jerk. My diagnosis was: Tabes, atrophy of the optic nerve, partial in the right but progressive. Cause: Syphilis. I then sent him to the Worcester City Hospital for a Wassermann test. On August 25, he returned with a record of a positive Wassermann. I sent him to Dr. Phelps for the salvarsan treatment, but Dr. Phelps reported that the interview was unsatisfactory.

Dr. Capeles of the Massachusetts Eye and Ear Infirmary testified as follows: —

The first record is the out-patient record. It was on Sept. 24, 1914. Diagnosis of eye condition: "Optic atrophy of both eyes." A footnote states "referred to the nerve room of the Massachusetts General Hospital." We sent him to the Massachusetts General Hospital to be looked over carefully, — his heart, lungs and urine, and for a Wassermann test. They looked him over and sent their diagnosis. It shows that he had optic atrophy in both eyes, and then in parenthesis "tabes," probably the beginning of locomotor ataxia. Then there was a blood examination which was found double positive, meaning syphilis. This would mean moderately strong. It means that there is no question about the reaction.

The record from the Massachusetts General shows they not only did the Wassermann but went beyond that and did further tests. These further tests are for syphilis. I saw Bobell at a clinic. We thought his present condition came from syphilis. He came back to us with a friend, and the friend left him on our hands. He could not see, so we took him into the house until somebody would call for him. That was September 30, and the diagnosis was the same, — "optic atrophy." We gave him some treatments, — a saturated solution of potassium iodide. On October 3 he was discharged, — discharged the same as on entrance; vision had not improved and had not got any worse. I have not seen him since, but in the nature of things I should think he would probably be totally blind.

On September 24 the record from the Massachusetts General Hospital is as follows: —

Present Illness. — Three months ago got hot zinc in left eye and little in right eye. Eyesight has failed steadily for past three months. Left eye now blind; can see slightly with right.

Physical Examination. — Knee jerks not obtained; Achilles slight, left greater than right; no Romberg.

Wassermann Report. — Cholesterin antigen strongly positive. Acetone insoluble antigen strongly positive.

The records from the Massachusetts State Infirmary are as follows: —

Admitted Oct. 6, 1914.

Patient states that he was burned by hot zinc in left eye three months ago; that his sight in right eye has been failing since.

Examination of eyes shows optic atrophy of both eyes. Tension of right eye somewhat increased, presenting a slight glaucoma. No inflammatory signs. Treatment, mercury.

March 7, 1915. — Seen by Dr. Cheney of Boston in consultation to-day, who found no evidence of external injury and attributes ocular symptoms to syphilis.

On Oct. 3, 1914, Dr. Berry wrote the following letter to Miss Parker, social service department of the Massachusetts Eye and Ear Infirmary, Boston: —

Your letter concerning the patient, James Bobell, 47 Ellsworth Street, Worcester, is at hand. By this I can see that the poor fellow has made no progress. His diagnosis is on my records, — paralysis of the optic nerve, Argyll Robertson pupil, tabes, specific history and positive Wassermann. He was referred here to a specialist for salvarsan treatment, but

declared he could not afford it and wished to go to the infirmary. As our City Hospital here is not now giving salvarsan treatment, owing to its great expense, I had hoped that the infirmary with its larger resources would be able to give it. If he reports again to me I will invite the co-operation of our associated charities in helping him to have the salvarsan treatment.

The committee of arbitration finds, upon all the evidence, that the employee, James Hobell, was not incapacitated for work on account of the injury which he received on May 6, 1914; that the present condition of blindness is due to optic nerve atrophy; that the condition responsible for the present disability is not a result of the injury which he received on May 6, 1914; and that the employee therefore is not entitled to compensation under the Workmen's Compensation Act.

THOMAS F. BOYLE.
FREDERICK A. CARROLL.
CHARLES F. CAMPBELL.

CASE NO. 1746.

JOSEPH B. AND LILLA R. LESUER, DEPENDENTS OF CLARENCE E. LESUER (DECEASED), *Employee.*
CITY OF LOWELL, *Employer.*

"LABORERS, WORKMEN AND MECHANICS." MEANING OF PHRASE. INSTRUCTOR IN VOCATIONAL AND INDUSTRIAL EDUCATION NOT A LABORER, WORKMAN OR MECHANIC. CLAIM DISMISSED.

The record shows that the decedent was an instructor in vocational and industrial education and gave practical demonstrations in mechanics. He instructed his pupils in English, arithmetic and civics, as well as in mechanics. The testimony showed that "when an automobile is brought in and the boys are given their instructions in taking it apart and putting it together again the teacher gives them verbal instructions as to what to do; he tells one boy to take off the exhaust or wheel and he does it, — the boys do the work. He directs them. Occasionally, when the automobile is put together or taken apart, he takes hold and gives them an idea about how it is done."

Held, that the decedent was a workman within the meaning of the phrase as used in chapter 807, Acts of 1913.

Review before the Industrial Accident Board.

Decision. — Industrial Accident Board, revising the findings of the committee of arbitration, decides that the decedent was not a laborer, workman or mechanic.

Appealed to Supreme Judicial Court.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Joseph B. and Lilla R. Lesuer, dependents of Clarence E. Lesuer, deceased, *v.* City of Lowell, this being case No. 1746 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Warren W. Fox, representing the dependents, and J. Joseph O'Connor, representing the employer, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Lowell, Mass., on Wednesday, May 26, 1915, at 10.30 A.M.

Joseph Hennessy appeared as counsel for the employer, and Melvin G. Rogers appeared as counsel for the dependents.

It was agreed that Clarence E. Lesuer was in the employ of the school department of the city of Lowell on Oct. 23, 1914, and that his average weekly wage was $17.30 a week, based on an annual salary of $900.

The issues were whether Lesuer was a workman, laborer or mechanic under the Workmen's Compensation Act, and whether there was any dependency on the part of the father and mother.

Mr. ROGERS and HUGH T. MOLLOY.

Q. Will you read the first entry on the school records in regard to Mr. Lesuer? A. This is the meeting of Aug. 29, 1911. This follows a report concerning the Industrial School, as it was then called, and goes on: "Teachers were then elected as follows: machine department, etc., carpenter, etc., steam and electrical engineer, Clarence E. Lesuer."

Q. Have you any other records regarding him? A. The following June the name should appear in the elections of that year, but I am sure that they are all entered just as "teachers." It is under this heading: "Meeting of June 24, 1912. Committee on teachers. We also recommend the election of teachers who have served two years or one year, as follows." He had been serving from the preceding September. We find serving in the vocational school, Clarence E. Lesuer, June, 1912.

Q. There are no other records as far as you know? A. No, I should say there would be no reference to him except subsequent routine elections, and maybe some question as to salary.

Q. Can you tell us what salary he was receiving at the time of this

accident last October — how much a year? A. My impression is $900 a year, but if you want to be sure I will simply consult the pay roll.

Mr. ROGERS. Then I can prove it by other witnesses.

Mr. MOLLOY. His salary would be in the school report for the year 1913. That is my impression from memory, and he received some extra compensation for evening work in the vocational school. They were supposed to give two evenings free, and any evenings over that instructors in the day vocational school were paid for.

Q. Is this school directory gotten up under your supervision? A. Yes, that is official.

Q. What was his particular assignment in 1914 according to the school directory?

Mr. HENNESSY. I object. It has not appeared by the record of the school board that he had another assignment given to him.

Mr. ROGERS. Mr. Molloy, did I understand you correctly that if there is a different assignment made it may not appear in the school board records, but it is something that you order as superintendent of schools? A. I would like to answer that. The masters of schools are given almost full latitude by the school committee in making assignments of the school teachers in their own schools to particular grades or subjects. He might have the assignment quite materially changed in the high school from one year to another on account of the exigencies of the courses.

Q. Are these assignments reported to you?

Mr. Hennessy objected on the ground that Lesuer's employment was shown by the books, and that the proper official over him is the school board.

Mr. ROGERS. How is this book made up? [Showing "School Directory, City of Lowell, 1914."] A. By the superintendent of schools.

Q. On reports given him by the principals or masters of the schools? A. It is a book which changes from year to year with the changes made from time to time. This book would be the basis for the directory of 1916. Every school sends its own directory, which we use in compiling this one. That is a part of the duty called for by the superintendent of schools.

Mr. HENNESSY. Is that record the record that is authorized by the school board or just something for the convenience of the superintendent of schools? A. I should say that it was perhaps authorized by implication. At any rate, it is a duty to get it out.

Q. Is it not something which has grown up here by custom and for the convenience of the superintendent of schools, rather than any act of the school committee? A. No, not for the convenience of the superintendent of schools so much as for the committee, teachers, masters and men who have all sorts of business relations with the school department.

Mr. HENNESSY. My objection goes to this because I know there is no authorization by the school board to sanction this particular thing. It is something grown up for convenience.

Mr. ROGERS. I think the superintendent of schools has stated here that this report was made up by him in the performance of his official duty, on the information furnished him by the masters and principals, and why, under the strictest rules of evidence, is not that admissible?

Mr. HOLMAN. I think it is, but you can get at it more quickly by getting the principal of the school, the superintendent, testifying as to his duties. We want to find out what the man was.

Mr. MOLLOY. Looking at it simply in the interests of truth, it can be assumed that practically all assignments of teachers are authorized by the school department officially if there is no evidence to the contrary.

Mr. HENNESSY. I object.

Mr. ROGERS. Can it be assumed that an assignment made by the masters or principals of the schools of Lowell has been approved by the school committee if there is no record in their books of records to the contrary?

Mr. HENNESSY. I object.

Mr. HOLMAN. You may answer.

Mr. HENNESSY. Please note the exception.

Mr. ROGERS. I am asking about the same matter concerning which you were speaking. If there is no record in the books of the school board to the effect that an assignment of a teacher to particular work by the master or principal of the school, has been disapproved, can it be assumed that it has been approved? A. Yes, it can. It must be assumed because the superintendent has knowledge of the vocation of these teachers when visiting the schools, and if there is any objection to it, there would be some action concerning the objection to it.

Joseph B. Lesuer testified that he was the father of the deceased, and had a brief talk with his son in the hospital after the accident.

Mr. Hennessy objected to the testimony of this conversation, and his objection was noted.

Joseph B. Lesuer said he asked his son if they had used the same tank before under similar conditions, and he said "Yes." He asked how it happened and his son said he did not know. The accident happened in the basement of the school on Broadway. He estimated that his son's contributions to the family averaged $6 a week. Lesuer's mother always or nearly always received the money. She paid the funeral and hospital bills which were introduced. Mr. Lesuer, the father, stated that he himself earned $32 per week, and was educating a daughter in a Western college.

Thomas F. Fisher, principal of the Industrial and Vocational

School where the accident occurred, testified that he had been principal since March, 1913. He had known Lesuer that long. He was teaching in the automobile department when he went there, and he had not disturbed him.

Mr. ROGERS. Can you describe in more detail just what a teacher who occupies that position as instructor in automobile repairing does in the course of teaching? A. An automobile is brought in and the boys are given their directions in taking it apart and putting it together again. The teacher gives them verbal instructions as to what to do; he tells one boy to take off the exhaust or wheel and he does it, — the boys do the work. He directs them. Occasionally, when the automobile is put together or taken apart, he takes hold and gives them an idea how it is done.

Q. He instructs in all kinds of automobile repairing, and he may, at times, give a practical demonstration himself as to how the thing is done? A. Show them himself, yes.

Q. That is true of all kinds of repairing? A. Yes, where any such thing is possible, of course.

Q. And Mr. Lesuer was killed, or rather injured, by an explosion in the basement of the school? A. Yes.

He did not remember the date of the accident and did not know what Lesuer was doing at the time of the explosion. It was Lesuer's duty, as instructor, to show the boys how to make repairs and use the various tools and machines necessary. The school hours closed at 3.30 o'clock, but the teachers were expected to stay after that time to get their records and prepare the work for the next day. Lesuer took these boys as green boys, and taught them all that they needed to know to fit them to be practical automobile repairers. This included brazing. The school hours were from 8.30 to 3.30, with half an hour out at noon until 12.30. The explosion was at 4.15. He had not given Lesuer any order on this job, and the work was not done on any order from him, and it was being done after 3.30 o'clock. He (Fisher) had left the school at 1.30 on that day. If an order came in for automobile repairing his office would send the order to Lesuer. When asked if no matter what the work was the instructor was engaged in at 3.30 it was automatically cut off, he replied that there was no strict rule, the boys are dismissed at that time.

Mr. HOLMAN. Suppose the instructor himself was at work on a job and instructing the boys under him, and 3.30 came and he was right in the

midst of an operation that should be completed, would he have gone on and completed the work — would it be the proper thing to do? A. I would leave that to his judgment.

Q. Do your teachers leave at 3.30? A. No. On some occasions they do.

Q. Why not? A. Because they make up the time cards and clean up the day's work and records, etc., see what jobs are unfinished and arrange for the work next day.

Q. Would it carry his work as late as 4.15? A. Sometimes as late as 6 o'clock.

Q. Do they get extra pay for that? A. No, they do not.

Q. That is their work? A. Yes.

Q. Then their day's work does not begin or end at an arbitrary hour? A. They are supposed to be at the rooms at 8 or 8.15.

Q. And stay till they get through with the work? A. Yes.

Q. That does not mean that they quit at 3.30? A. They quit teaching at 3.30, but there is other work for them to do.

Q. You have control over their time? A. I could demand that they stay, yes. They stay very often.

Q. How late do they stay in the afternoon? A. You mean in general — the average time?

Q. Yes, and the unusual time also. A. Some of them leave at 3.30 and some of them at 5 or 5.30.

Q. But they are expected to stay until they get the work cleaned up? A. Yes, or come in the morning. They have quite a liberty to do as they please.

Q. They exercise their judgment more or less? A. Yes.

Q. And exercise their judgment whether they will clean up that day or come in early the next morning? A. Yes.

Mr. Rogers. How late have you ever known Lesuer to stay? A. He has stayed until 5 o'clock.

Q. At times there was considerable demand for speedy work on the automobiles by the people who brought them there — they were in a hurry to get them back? A. Sometimes they are, but I always tell them to take their time to do the work right.

Q. Was it within the scope of the employment of the teacher to instruct a pupil at any time after 3.30? A. If they had some work to do they asked the boys if they would like to stay and do it, and some of the boys were so interested that they would stay around and help. That has happened a number of times, but they cannot be compelled to stay.

Q. These orders you speak of were orders to keep track of the expense of the materials? A. To keep track of the boys' time and what they are doing.

Q. And partly to keep track of the expense that there had been for material? A. It is a peculiar situation there. The patrons furnish most of the materials.

Mr. HOLMAN. Do you get paid for the work that is done? A. Yes, most of it.

Q. If, for example, I had an automobile sent into your school to be repaired, what would I be expected to pay for it? A. We charge whatever we think is within reason, and the amount of time taken to do it. We are not running an automobile business, simply a school, and we use these automobiles to teach the boys on. We lump the thing. We say, "Charge $2 or $3 or $4 for that." The man who brings the machine furnishes practically all the material. The money received from repairs is sent to the city treasurer.

Mr. ROGERS. Did Mr. Lesuer do any repairing on the machines which were used to repair the automobiles — to keep these machines in order? Did his work in any way come in that line? A. If any part of the lathe broke we repaired it there in the shop.

Q. And that was part of his duty — to keep the machine shop in order? A. Yes, as far as it was in his department.

Mr. HOLMAN. You had lathes and things there? A. Yes.

Q. And these lathes were used in the repair work? A. Yes, giving the boys practice in the machine work.

Mrs. Lilla R. Lesuer testified that she was the mother of Clarence E. Lesuer who died on Nov. 1, 1914, as a result of an explosion Oct. 23, 1914.

Mr. ROGERS. Tell us as nearly as you can the circumstances and the amounts of any money contributed to you and Mr. Lesuer during the last year of his life. A. Clarence was always free, and he used to put his money in a certain place, and he would say, "Mother, when you want money, go and take it," and I used to do so, and if there was anything I wanted I would go and take the money. It was always that way, ever since he was a boy. He was always free with it.

Q. Do you remember my asking you to estimate as near as you could what Clarence had contributed towards the support of the family during the last year? A. It was hard to tell, but as near as I could estimate, I thought it would be about $6 a week.

Q. Tell us, as near as you can, how you came to that conclusion? A. Of course he had not been paying any board, but giving money as we needed it, and I would go and take it, and until the first of this year, or through the summer, he said, "When I begin to get my pay again I will pay my board so that will help sister out at school." I said, "Well, I do not like to take it, but if you would like to do that, all right." He said, "Yes, I will pay you $6 a week for board hereafter," so I said, "Well, it will be a great help."

Q. Did he start to pay you regularly before his death? A. He did. In September he gave me $6 a week. He lived with us in Lowell at that time, and we recently moved to South Framingham — since his death. I

talked with Clarence when he came out of the ether. I would not allow him to talk much, but the next day I was with him and talked about the explosion. He said that he was welding a piece, and he asked this mechanic to stay and help him do this work, and he was doing it — they were doing it together — and he told John Kenney to do some part of it — to adjust something or do some part — while he was doing something else, and as quick as could be, the next thing he knew it went off, and of course he did not know whether there was anything the boy had done or anything at all. He really did not know.

Q. Did he tell you who John Kenney was? A. He was a pupil.

Mr. Fisher, on being recalled, presented the amounts collected by the automobile department during April, June, July and December, amounting to $41.20. The cards were shown on which were kept the orders and the boys' time. One of the cards showed that work was done on a job during the week ending October 24, and Mr. Fisher stated that the work was probably being done on the day of the accident.

Mr. Holman. This says, "Name of job, — shaft." A. The boy was working on the shaft. He might have been milling it. The operation on the time card would show it.

Q. What do they braze? A. Broken parts — broken shaftings.

Q. Had he been doing brazing that day, do you know? A. Not that I know of.

Q. Do you know what he had been doing, as a matter of fact? A. He had been working on these different orders during that day.

Q. You do not know whether they required brazing? A. We had no apparatus fit to do brazing with. We had apparatus for welding, which was broken — out of order. I had refused to take in jobs for welding in June. I turned over a number of jobs and sent them outside the shop. The equipment was never repaired and in working order, to my knowledge.

Mr. Rogers. Here is one of the job cards, week ending October 23, and I call your attention to the fact that the time is 12.30 to 5. A. There is no accuracy to that. It was very carelessly kept.

Q. Suppose that a pupil was willing and anxious to stay after school, being anxious to learn, and some job was unfinished and he stayed an hour after 3.30, would you consider that it ought to go down on the time card? A. No, sir. I would give directions not to have it down. The only time to go on the cards is actual school time. If the boys wanted to stay they could, if they cared to. We did not drive them away, but we did not compel them to stay.

Mr. Holman. Do you know what this man was doing at the time he was injured? A. They said he was trying to braze an exhaust pipe of an automobile. There was a joint that was leaking, and they said he was trying

to braze it. The pipe was put in my office for the man to call for, and they said that is the work he was on.

Q. That is a repair job, that had been brought? A. Presumably. I did not know anything about it. It was brought to my office. I returned the pipe to Mr. Merrill who is in the ice-cream business on Westford Street. It was part of his machine, I was told.

Mr. HENNESSY. Was this man, Lesuer, the head of that department? A. I do not know what you would say in regard to that. He was in that department teaching when I went there. He was acting head of that department.

Q. Who would be the head? A. There was not any legal or regularly elected head that I know of.

Q. But if there was a head, he was it — he was the department head there? A. Acting that way. I do not know whether he was appointed by the committee or approved by the State, but he was there. I dealt with him as the head of the department, and treated him as such.

Q. What is the relation of the State to this? A. The State approves the equipment, teachers and courses, and if they approve they reimburse for half of the maintenance of the school. The city has to furnish the buildings and equipment.

Mr. ROGERS. It is not strictly a city school? Pupils come from near-by towns? A. Yes. The State reimburses the town for half of the tuition.

Mr. HENNESSY. The school committee appoints the teachers and pays them in the initial? A. Yes, if the teachers are satisfactory to them.

Q. You had been there how long? A. Since March 3, 1913.

Q. And you found Mr. Lesuer there? A. Yes.

Q. And you continued him in the same grade and same position? A. Yes.

Mr. HOLMAN. Was there other work done for Mr. Merrill's machine? A. There had been the year before.

Q. This time? A. Not that I know of. The work that had been done for him had been cleaned up and the bill paid. There had been nothing else come in that I know of that had my sanction.

Mr. HENNESSY. You know nothing of this particular job at all? A. I know nothing about it.

The issues in this case are whether or not this man was a workman, laborer or mechanic under the act, and whether there is any dependency on the part of the father as the head of the family.

In the construction of these words we look for guidance to decision rendered by other tribunals, and to the ordinary significance of the words themselves in everyday use. Webster defines a mechanic as "one who practices any mechanical art;

one skilled or employed in shaping and uniting materials, as wood, metal, etc., into any kind of structure, machine or other object requiring the use of tools or instruments." In Story *v.* Walker, 79 Tenn. 515, "a mechanic, engaged in the pursuit of his trade, is a workman employed in shaping and uniting materials, such as wood, metal, etc., into some kind of structure, machine or other object requiring the use of tools."

Workman is a general term, and frequently applies to one who does skilled work as contrasted with a laborer whose work demands exertion rather than skill, as indicated in the citation above.

City of New Orleans *v.* Lagman, 10 Southern 244; 43 La. Ann. 1180. "I am of the opinion that it is possible for a person without legs or arms to become a 'practical mechanic;' that is to say, it is not necessary for a person to perform manual labor with tools of any special trade or occupation to become such a mechanic. If such a person is competent to devise, direct and supervise the construction of all kinds of buildings in all their parts he is at once an artisan, a handicraftsman and a mechanic." People *v.* Board of Aldermen, 42 N. Y. Supp. 545.

We find, therefore, that Clarence E. Lesuer was a workman and a mechanic, and as such was included among those protected by the Workmen's Compensation Act under section 6 of chapter 807, Acts of 1913, the city of Lowell having accepted by vote the provisions of the act, and the Commonwealth being required to accept the act by the terms of chapter 807, Acts of 1913, section 1.

The committee of arbitration finds, further, that the employee contributed the sum of $6 a week in the general family fund, and that the father of the employee, Joseph B. Lesuer, received this contribution and disbursed same for the benefit and support of the entire family, including the deceased. The employee had passed the majority, and there was no legal obligation on the part of his father, as the head of the family, to support him or furnish board. The employee received his board from his father, the actual cost of such board in that locality being $3 a week. The Industrial Accident Board has ruled, in the case of Mary Walsh, partial dependent, *v.* Travelers Insurance Company, and Daniel T. Keefe *v.* Massachusetts Employees Insurance Asso-

ciation, that the board furnished the employee should not be deducted in determining the amount of compensation due a person partially dependent under the statute, and while the chairman of the committee, a member of the Board, disagrees with this opinion, he must accept the decision until the Supreme Judicial Court decides that such decision is contrary to the law. The average weekly wages of the employee were $17.30, and his annual earnings $900. His annual contribution was $312. The father of the employee, being a partial dependent of the employee, is entitled to the proportion of the amount due a person wholly dependent represented by the relation of the amount contributed to the annual earnings, that is, to 312–900 of $10, which is $3.46, and the insurer should pay said partial dependent the sum of $3.46 weekly for a period of five hundred weeks from the date of the injury.

DUDLEY M. HOLMAN.
WARREN W. FOX.
J. JOSEPH O'CONNOR.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday morning, Sept. 23, 1915, at 10 A.M., and, revising the decision of the committee of arbitration, find and decide as follows: —

To the report of the material evidence supplied, furnished by the committee, should be added this statement: The decedent instructed the boys in English, arithmetic and civics as well as in mechanics. With this addition the report filed by the committee of arbitration contains all the material evidence pertinent to the issues involved.

We find that he was an instructor in vocational and industrial education, and while, as such, he gave practical demonstrations in mechanics, we are of the opinion that his duties were not such as to bring him within the purview of the statute. It appears in the verbatim transcript of the testimony that he also instructed the boys in English, arithmetic and civics.

The words "laborers, workmen and mechanics" have been used frequently in recent legislation in this Commonwealth, and have acquired to a certain extent a technical meaning. In construing the words as used in the statute relating to the hours of labor, Pillsbury, A. G., said, in an opinion to the Governor and Council in 1891: —

> Persons employed in instructing boys or girls, educationally or industrially, do not come under the act. They are teachers, and a teacher is neither a laborer, workman nor mechanic, in the sense in which these words are used in the statute. (1 Opinions of Attorney-General, 10, 11.)

A well-known rule of statutory construction, which has received legislative approval in this Commonwealth (H. L., c. S. s. 4, cl. 3), is that "Words and phrases shall be construed according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such meaning."

It must be assumed that these words as used in the statute were intended by the Legislature to have their well-recognized meaning, and we are of the opinion that neither in their popular nor technical meaning can they be held to include a person performing the duties of the deceased.

The Board find and decide upon all the evidence that the decedent, Clarence E. Lesuer, was not a laborer, workman or mechanic within the meaning of the words as used in chapter 807 of the Acts of 1913, and the claim of Joseph B. Lesuer is dismissed.

FRANK J. DONAHUE.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

Findings and Decision of the Industrial Accident Board on Review.

The following agreement was filed with the Industrial Accident Board on Saturday, Dec. 23, 1916, at 2 P.M.: —

> In the above it is agreed that in order to complete the record of the case, the Industrial Accident Board may make the following finding: —
>
> That the Industrial Accident Board dismiss the claim of Lilla R. Lesuer

for funeral expenses of the deceased amounting to one hundred and fifty-two dollars ($152), for the sole reason that the deceased was not a laborer, workman or mechanic within the meaning of the statute.

HAROLD A. VARNUM.
Attorney for the City of Lowell.

QUA, HOWARD & ROGERS.
Attorneys for Joseph B. Lesuer and Lilla R. Lesuer, administratrix of Clarence E. Lesuer.

The record shows that the claim of Joseph B. Lesuer, alleged dependent of Clarence E. Lesuer, *v.* City of Lowell, was dismissed by the Board on Saturday, April 22, 1916, upon the ground that the decedent, Clarence E. Lesuer, was not a laborer, workman or mechanic within the meaning of the words as used in chapter 807 of the Acts of 1913.

The Industrial Accident Board find and decide, upon the agreement herein incorporated and all the record, that the claim of Lilla R. Lesuer for funeral expenses should be dismissed, the decedent not being a laborer, workman or mechanic within the meaning of the statute.

FRANK J. DONAHUE.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
CHESTER E. GLEASON.

CASE NO. 1760.

MRS. ARCHIBALD, WIDOW OF SAMUEL ARCHIBALD, *Employee.*
EDWARD A. MASEFIELD, *Employer.*
GLOBE INDEMNITY COMPANY, *Insurer.*

ARISING OUT OF EMPLOYMENT. POTTS FRACTURE OF BOTH LEGS. OLD ALCOHOLIC. DELIRIUM TREMENS. DEATH. PROXIMATE CAUSE. INSURER LIABLE.

The employee, an old alcoholic, who had recently been drinking, but who was not intoxicated at time of injury, fell from the roof on Dec. 18, 1914, and sustained a Potts fracture of both legs. He was taken to the hospital and liberal doses of whiskey constituted part of the treatment. Delirium tremens set in and he died Jan. 16, 1915.

Held, that the proximate cause of death was the injury.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Mrs. Archibald, widow of Samuel Archibald, *v.* Globe Indemnity Company, this being case No. 1760 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, John P. Meade, representing the dependents, and Ralph W. Stearns, representing the insurer, heard the parties and their witnesses in the Aldermanic Chamber of the City Hall, Brockton, Mass., on Monday, April 5, 1915, at 1 P.M.

Howard Sheffield appeared as counsel for the insurer. The dependents were not represented by counsel.

The deceased, while employed as a roofer on a building at the corner of Fremont and North Montello streets, in the city of Brockton, on Dec. 18, 1914, slipped and fell from the roof to the ground. He sustained a Potts fracture in both legs and an injury to the hip. He was taken to the Brockton Hospital, where he died on Jan. 16, 1915. The question was whether or not death resulted from the injury. It was agreed and the committee finds that his average weekly wages were $18.

Edward A. Masefield, Archibald's employer, testified that the deceased worked for him for twelve years. Four years ago he quit for six months. He was an unsteady worker up to that time. During the last four years he was "fine and steady." He had put every dependence on him since he came back to work. If Archibald had been drinking during the last three and a half years of his employment his employer had been badly fooled.

George P. Booth, employed on the premises where Archibald was at work at the time of the accident, testified that he saw him twenty minutes before he fell, and there was no sign of liquor on him.

Fred Willey testified that he had worked with Archibald for the last four years. He never knew him to be drunk. The morning of the accident was the first time he had smelled liquor

on him in four years. This was the only knowledge he had of Archibald's having been drinking at all in four years.

Mrs. Archibald testified that her husband had not been drinking for four years before the accident.

Dr. A. Hilliot Paine, medical examiner for the First Plymouth District, testified that he made an autopsy upon the body of Archibald on the afternoon of the latter's death. The autopsy was not performed in his official capacity as medical examiner, but in his private capacity as a physician, and at the request of Mr. Alfred E. Gallant, house officer at the Brockton Hospital, where Archibald was confined during his last illness and where he died. He found an emaciated body, the union of the fracture was firm, there was a dry slough 4 by 4 inches over the sacrum, which on section showed the soft parts filled with old blood. The bony structures of spine and cord did not show any injury. The dura was somewhat engorged and the brain very wet (alcohol); substance of brain normal. There was slight engorgement of the base of the right lung; otherwise lungs were normal; small deposits on the valves of the heart were found; the liver was of a nutmeg character (alcohol); the capsules of the kidneys were adherent, showing an old nephritis; the condition of the liver was an old condition, and the condition of the kidneys was an old chronic inflammatory condition. The alcohol brain is considered sure evidence of an alcoholic condition. There may be a wet brain after delirium other than delirium tremens, but not so well marked as in this case. Assuming that the accident had not happened, he was of the opinion that Mr. Archibald would still be living; there would be a chance for him; one could not tell when the delirium would come; it might never come. In this case he believed that previous excessive use of liquor had brought on the delirium; that the accident had nothing to do with it. He would not expect the development of delirium tremens except in a steady, long-standing drinker. If Archibald had not drunk for four years he would not expect to find the condition he did find. If he had been drinking for a few weeks prior to the accident it might result in the starting up of old conditions. If, as the hospital records showed, Archibald was given an ounce of whiskey every three hours from December

18 to the 28th, then one-half ounce every three hours up to January 7, then an ounce every three hours for one day, and after that 2 ounces every three hours, the wet condition of his brain would be accounted for by the whiskey he took in the hospital. A nutmeg liver is not always symptomatic of alcohol.

Alfred E. Gallant, Tufts Medical School, 1915, house officer at the Brockton Hospital, testified that when Archibald was brought in his wife — in giving his history — stated that he had been a hard drinker up to either one year or four years ago; which, he was not sure, but believed she said a year. On December 18 the patient was given morphia grain, atropin $\frac{1}{100}$. He came in at 10.28. This was given at 10.45. He came to the ward at 11.25. Then an order was given for whiskey, 1 ounce every three hours, and triple bromide, grains 20, every three hours. The patient was put on liquid diet and 2 ounces of castor oil given in the afternoon. He was ordered an ether breakfast for the next morning, but that morning nothing was done on account of the intense pain he had. Then, on the 19th he had no medication. On the 20th he had magnesia sulphate, 2 ounces, crystals at 5 A.M. The next time he was given any medication was on the 27th; he was given $\frac{1}{6}$ of morphia, $\frac{1}{100}$ atropin subcutaneously, sos, meaning as often as necessary. On the 29th the morphia was omitted, and he was given injection, sterile water, in order to get rid of the morphia. One ounce of whiskey was given every three hours up to the 28th, when it was reduced to one-half ounce. On January 7 whiskey was increased to 1 ounce. He was given $\frac{1}{60}$ strychnia every three hours, sodium bromide, 20 grains, and chloral hydrate, 4 grains, every four hours. On January 8 he was given digitalin, grain $\frac{1}{100}$, and strychnia, grain $\frac{1}{60}$, every three hours. The digitalin was only given once, the strychnia every three hours. The whiskey was increased to 2 ounces on account, he believed, of his restlessness. About that time the employee began to have hallucinations, "He was mumbling to himself; had hallucinations; he was moving his eyes." On January 9 it became necessary to catheterize the patient every eight hours. On January 15, he was given sodium bromide, 15 grains, tincture of hyoscyamus, 10 minims, four times a day. When Archibald came in

on the 18th he was conscious, but in terrible pain; no one could touch him; he would yell like mad. Dr. Gallant suspected a septic condition of the injury over the sacrum. There was paralysis of the bladder which he thought was due to this hip injury. The man was practically unconscious for a period of two weeks before he died. To get any response at all he would have to shout at him; then there would be a slight tremor of the body, — no reaction at all, to speak of, — and eventually, before he died, he became unresponsive to any situation at all.

At the autopsy a little pus was found in the old clot over the spine. The spleen was negative, kidneys negative in size; capsule adherent; liver large and somewhat cirrhotic; stomach negative. The necrosis in the back extended down to the sacrum.

Archibald's temperature was normal when he came in; on the next day it went up to 99.5; on the next three days it ran 100, but did not reach 100 again until January 3, when it jumped to 101.6. On January 4 it was back to slightly below normal, but on the 5th jumped to 103.8; the next day it dropped almost to normal, and the same day up again to 102; it ran 102 for four days; down to 100 on January 10; then up to around 105 until he died on the 16th. The trend of the pulse and respiration was upwards from the beginning to the end.

Dr. Elmer E. Southard of the Boston Psychopathic Hospital, called as an expert by the insurer, testified that the history of the case indicated to him that something happened on January 5 to throw the temperature up, increase patient's pulse, and, to some extent, his respiration. From then the pulses kept on a general up-grade to the end. As to what the something was is a question. No sign in the autopsy of action on the part of the spleen; it did not grow big; there was not very much pus, — a few drops at the base of the spine; the legs had healed up. Whether this thing is due to the liver or the kidneys, or somewhat due to the brain, will remain a question which he did not suppose any one could settle; but there is a disease that has come on and caused death. The man had some chronic effects. They may have been due to the abuse of alcohol before, and they may — as in the range of disease — have been due to

something else; but, in any case, he had them, and that makes favorable soil for the production of delirium tremens when alcohol is given. Most people do not die of delirium tremens the first time. The percentage is not over one in four. Surgical cases are more complex and the mortality greater, as the patient has to be confined to the bed to get good formation of the bones, and to prevent infection from settling there. It is conceivable that the accident shook him up, and in some way hurt the kidney and liver function.

Dr. Fred W. O'Brien, assistant orthopedic surgeon at the Brockton Hospital, testified that he saw the patient nearly every day from the time he was brought in until he died. In his opinion death was caused by delirium tremens due to shock from the injury.

The evidence shows, and the committee of arbitration finds, that Archibald was an old alcoholic, who had recently been drinking, and whose system was in a condition to predispose him to delirium tremens under certain conditions; that he suffered severe injuries, — Pott's fracture in both legs, compound in the right, and an injury to the hip which sloughed and caused some sepsis, accompanied by paralysis of the bladder; that there was, naturally, considerable shock to the system; that these injuries, and the conditions which they brought about, led to the development of the delirium tremens which his system favored, and which resulted in his death.

The committee of arbitration finds, therefore, that the injuries which Samuel A. Archibald suffered in the course of his employment, and which arose out of such employment, were the contributing proximate cause of his death; that Mrs. Archibald, who lived with the employee at the time of his injury and death, is conclusively presumed to be wholly dependent upon him for support; and that there is due the said widow, from the Globe Indemnity Company, the sum of $4,000 in weekly payments of $10, for a period of four hundred weeks from the date of injury, Dec. 18, 1914, less $23.29 paid the employee on account of incapacity for work resulting from said injury.

FRANK J. DONAHUE.
RALPH W. STEARNS.
JOHN P. MEADE.

CASE No. 1764.

JOHN TIERNEY, *Employee.*
HOUGHTON & DUTTON COMPANY, *Employer.*
LONDON GUARANTEE AND ACCIDENT COMPANY, LTD., *Insurer.*

ARISING OUT OF EMPLOYMENT. ASSAULTED BY FELLOW EMPLOYEE. NOT A RISK OF THE EMPLOYMENT.

The employee suffered for months from an abscess of the face, alleged to be the result of a blow struck by a fellow employee.
Held, that the injury did not arise out of the employment.
Review before the Industrial Accident Board.
Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John Tierney *v.* London Guarantee and Accident Company, Ltd., this being case No. 1764 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, Loton D. Jennings, representing the insurer, and Frank W. Campbell, representing the employee, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, New Albion Building, Boston, Mass., on Monday, April 26, 1915, at 2 P.M.

N. S. Avery appeared as counsel for the insurer, and Julian C. Woodman appeared for the employee.

The employee has suffered for months from an abscess of the face alleged to be the result of a blow struck by a fellow employee. If his injury was received in the course of his employment and arose out of said employment he would be entitled to fifteen weeks' compensation for time lost prior to his discharge by the Houghton & Dutton Company on Feb. 23, 1915. He further claims compensation from the latter date, alleging that his disfigurement has prevented him from getting any employment. His average weekly wages were $4.

The claimant, who was fifteen years old at the time of the alleged injury, testified that some time in March, 1914, he was

sent down to the street floor of Houghton & Dutton's on an errand. On his way back to the stairs he met one Brown, a window dresser, and two other window dressers coming down the aisle. The aisle was crowded, Brown was hurrying, and, telling Tierney to "get to hell out of the way," he gave him a push in the face with his hand. His face began to swell within ten minutes. He continued to work for two weeks and then was obliged to remain out for two weeks. From May 30 to August 20 he could not work at all. He went back to work on the latter date and worked until he was discharged on Feb. 23, 1915. His face was opened to drain the abscess on May 7, 1914, and has been opened twenty-one times since. It ceased to discharge on Jan. 9, 1915. He has tried to get work at several places, but nobody will hire him on account of the condition of his face.

James K. Brown, window dresser for Houghton & Dutton Company, testified that on the day in question he, in company with two other window dressers, one by the name of Sharkey, were on their way out to luncheon when they met the Tierney boy. The latter's face was swollen, and Sharkey said to him, "Who the h — struck you in the face?" Tierney turned to look at Sharkey. Brown was behind the latter, and to avoid Tierney's bumping into him put out his hand. Tierney's face struck it.

Miss E. J. Alexander, employed in the store as a buyer, testified that the boy came upstairs, crying, on the day of the alleged injury, and said that one of the window dressers had struck him. She painted his cheek with iodine. His face was swollen before this day.

The records of the Boston Dispensary, where the boy had a molar removed from the carious at its apices, removed from the upper jaw on the left side (the injured side of his face) on Dec. 23, 1914, show that he gave the same history of the case at the dispensary that he told on the witness stand at the hearing.

Medical evidence was introduced as to the probabilities of the blow being responsible for the condition of his cheek, but the committee deems it unnecessary to pass on this testimony.

To entitle him to compensation an employee must receive an injury not only in the course of his employment, but the

injury must be one "arising out of his employment." To arise out of the employment there must be a causal connection between the conditions under which the work is to be performed and the resulting injury. Certainly there was nothing in the conditions under which Tierney worked which subjected him to the risk of being wantonly struck in the face by a fellow employee.

The committee of arbitration finds that the blow which the claimant received was wantonly delivered by a fellow employee, and that, therefore, it did not arise out of his employment, in view of which, under the act, he is not entitled to compensation.

FRANK J. DONAHUE.
LOTON D. JENNINGS.

Frank W. Campbell dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, May 27, 1915, at 10 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows and the Board finds that the personal injury received by the employee, John Tierney, in March, 1914, resulted from a blow wantonly delivered by a fellow employee, and that said personal injury did not arise out of and in the course of his employment.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1785.

ANNIE C. TOOLE, SISTER OF EDWARD MOULTON (DECEASED), *Employee.*

T. STUART & SON COMPANY, *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

ARISING OUT OF EMPLOYMENT. DEATH. INTOXICATION, SERIOUS AND WILLFUL MISCONDUCT.

The employee met with a fatal accident while attempting to climb on to his wagon while a fellow employee was putting up his horses. He was intoxicated and helpless. There was no claim of dependency, but payment of doctor's bill and funeral expenses were sought by sisters.

***Held*, that the insurer is not liable.**

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Annie C. Toole, sister of Edward Moulton, deceased, *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1785 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, W. Lloyd Allen, representing the insurer, and J. Frank Williams, representing the dependents, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, New Albion Building, Boston, Mass., on Monday, May 3, 1915, at 2 P.M.

J. M. Morrison appeared as counsel for the insurer.

The deceased, while employed by T. Stuart & Son Company as a teamster, met with a fatal accident on Oct. 27, 1914, death resulting Nov. 4, 1914. No dependency was claimed, but the deceased's sisters sought the payment of a doctor's bill and funeral expenses. The question was whether the accident arose out of his employment.

The evidence was that the employee boarded with Harry E. Cutler of East Cambridge. On the night of the accident he drove up to Cutler's house with his team, presumably from Lynn, at about 8.30 o'clock. In the language of Cutler, "He was very drunk, indeed." Cutler helped him into the house

and into the kitchen, where he fell over a chair and landed on the floor with the chair beneath him. He lay there until Cutler picked him up. The latter, after feeding a little soup to him, helped him out onto the team, and himself drove the team out to Stuart's stable in Newton, as he had done before on more than one occasion under the same circumstances. He had to hold Moulton on the seat. With the help of Stuart's night watchman Cutler got Moulton down off the team. While Cutler and the watchman were unharnessing the horses Moulton tried to climb back on to the team, and had got on to the hub of one of the front wheels when he fell to the ground. Cutler and Leone, the night watchman, picked him up, carried him into the stable, upstairs, and put him to bed. Cutler asked him to go home, but Moulton refused, saying, "No, I'm too full. This is the drunkest I ever was." The next afternoon he was taken home in one of the Stuart autos, Cutler having come after him. Dr. Clancy of Cambridge was called and attended him, but Moulton died on the following Tuesday.

The committee of arbitration finds that the deceased received the injury which caused his death as a result of his own serious and willful misconduct, and that therefore the insurer is not liable for the expenses of his last sickness and burial.

FRANK J. DONAHUE.
W. LLOYD ALLEN.

J. Frank Williams dissents.

CASE No. 1787.

FRED GAGNON, *Employee.*
WILLIAM N. PIKE & SONS, *Employer.*
STANDARD ACCIDENT INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DISEASE. HERNIA. CHAIN OF CAUSATION. NOTICE OF INJURY. PRE-EXISTING WEAKENED CONDITION ACCELERATED BY CONTINUED AND REPEATED STRAIN OF HEAVY LIFTING, CAUSING HERNIA. EMPLOYER HAD KNOWLEDGE OF INJURY THROUGH STATEMENT OF EMPLOYEE TO SUPERINTENDENT. COMPENSATION AWARDED.

The employee was engaged in the framing of big timbers which were to go into a building being constructed by the subscribers. On a certain date he and another employee were rolling up a timber, when the employee's foot slipped and the timber rolled back and struck him in the groin. He caught it with his hook and held it, however. Immediately afterwards he felt a lump in his groin. His side continued to bother him, but he kept on working, and subsequently was obliged to seek medical treatment for a condition of hernia. The employee had a weakened condition in the region where the hernia developed, due to the heavy lifting involved in nine years of carpentry work, and the continued and repeated strain of heavy lifting which he was doing on the last job gradually pushed the intestines through the inguinal ring, completing the hernia on the day of the sudden exercise, when he caught and held the heavy timber.

Held, that the injury arose out of the employment.

Review of weekly payments before the Industrial Accident Board.

Decision. — The Industrial Accident Board finds that compensation is due employee until Nov. 17, 1915.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Fred Gagnon *v.* Standard Accident Insurance Company, this being case No. 1787 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, H. H. Chamberlain, representing the insurer, and Jeremiah F. Mahoney, representing the employee, heard the parties and their witnesses at the Hearing Room, Court House, Lawrence, Mass., on Tuesday, May 11, 1915, at 10.30 A.M.

J. C. Reiche appeared as counsel for the insurer, and Mahoney & Mahoney appeared as counsel for the employee.

The employee claims that he ruptured himself on Dec. 4, 1914, while lifting heavy timbers, in the employ of William N. Pike & Sons at Haverhill, Mass. Notice of the injury as required by the act was not given until Jan. 14, 1915. The question was whether or not the injury arose out of the employment.

It was agreed and the committee of arbitration finds that the average weekly wages of the employee were $21.

The employee testified that he went to work for Pike on the Haverhill job some time in November, and had been employed about three weeks when he ruptured himself. His work consisted of the framing of the big timbers which were to go into

a building that Pike was constructing. After framing the timbers they were piled up, this work being done by himself with sometimes one and sometimes two other employees, Walter Eastman and Daniel T. McDonald. The timbers were 8 by 16 inches by 24 feet, and were rolled up onto the piles by the use of skids and cant hooks. On December 4 he and Eastman were rolling up a timber when his foot slipped and the timber rolled back and struck him in the groin. He caught it with his hook and held it, however. Immediately afterwards he felt a lump in his groin. He called Eastman's attention to it, and the latter told him he had ruptured himself. He also called McDonald's attention to it. Although his side bothered him, he kept on working, and the rest of the time he was on the job Eastman and McDonald favored him in doing the heavy work, knowing that he had hurt himself. A week after the accident he went to Dr. Chenevert, who advised an operation or a truss. He did not have money enough to buy the truss, and went to the superintendent, Henry W. Spellman, and asked him for an advance of $1 so that he would have money enough for the truss, saying, "You know I got hurt here." Spellman gave him the money, but made no inquiries about the injury. He paid $3.50 for the truss. He worked up to January 13. It was wet and cold that day, his side was bothering him and he was feeling very bad, so he went home, telling "Dan" McDonald to tell his brother "Jack," the foreman, why he had gone. The next morning when he reported "Jack" discharged him. He knew nothing about the Workman's Compensation Act at the time of his injury, but afterwards some workmen who were riding down from the job with him on an electric car told him he was entitled to insurance. There were signs up on the job regarding injuries to employees, but he could not read and did not know what the signs were for until he was told afterwards. After being discharged he tried to get light work at other places, and on March 6 secured a job at the Walworth mill in Lawrence, alternating at weaving, which he was learning, and at carpentry in the shop. For this he received $13.50 a week. His side had never bothered him before December 4. He had been a carpenter for nine years. Since his injury his wife had been compelled to go to work.

Dr. Joseph O. Chenevert testified that Gagnon came to him some time in December. He was suffering from a right inguinal hernia. Whether it was an old one or a recent one the doctor could not say. He had been Gagnon's family physician for years, but had never treated him for hernia. Gagnon visited him twice. At present Gagnon can do light work, but cannot do the ordinary heavy work of a carpenter.

Daniel T. McDonald testified that he went to work on the Haverhill job on Nov. 4, 1914, and that Gagnon came to work one or two weeks afterwards. The timbers which he, Gagnon and Eastman were obliged to pile up weighed about 600 or 700 pounds each. They were stacked in piles 6 or 7 feet high. Gagnon complained to him about the injury two or three weeks after he came to work on the job. McDonald told him it was a rupture, and afterwards he and Eastman favored Gagnon in doing the heavy work. Gagnon said nothing to him about how he received it. On January 13 Gagnon told him he was sick and was going home, and asked him to tell his brother "Jack," the foreman. He told his brother that Gagnon had gone home, but did not tell him why.

John N. McDonald, foreman for William N. Pike & Sons, testified that signs were posted on the job relative to injuries to employees, but no special instructions were given them about reporting the injuries. He knew nothing about Gagnon's injury until after the latter had been discharged. The day Gagnon went home without notifying him he was going, and for which he was discharged, was a cold, disagreeable day.

Henry W. Spellman, superintendent for William N. Pike & Sons, testified that Gagnon frequently borrowed money of him, which always was deducted from Gagnon's salary, both on the Haverhill job and when he was employed by William N. Pike & Sons in the construction of the car shops of the Boston & Maine Railroad at Billerica. He asked once for money to buy a truss, but that was at Billerica, Spellman felt pretty sure. In a signed statement to the insurer he had not mentioned anything about a truss. He had seen the representative of the insurance company twice, some weeks ago and again just before testifying. He had mentioned the truss incident to him on one of these occasions, but whether it was to-day or several weeks ago he could not recall.

Dr. George W. Dow, appointed by the Board as an impartial physician to examine Gagnon, made an examination on Feb. 4, 1915, and reported as follows: —

The employee wears a truss on the right side, and when I removed it the rupture did not come down, but when he coughed a small knuckle of the intestine, the size of a walnut, would come through the external ring and then go back of its own accord. The truss seems to hold the hernia back all right, although he claims that he has pain and cannot lift or do any hard work.

On the left side, also, there can be felt quite an impulse when he coughs as though there was a beginning hernia on that side, but the intestine does not come into the external ring.

My experience with hernias is that they do not become suddenly complete, but are the result of continued and repeated straining in lifting, coughing, sneezing, etc., and so the gradual pushing through of the intestine through the ring until it is finally complete on some sudden exertion.

In this man's case an operation is the only means of giving him complete relief. I do not think as he is now it would be safe for him to do lifting of heavy timbers as he has described, but I believe he could do any light carpenter work if he so desired. I think if he had had light work three weeks ago, when he stopped, he might have continued working right along.

George W. Dow, M.D.

The committee of arbitration finds upon all the evidence that Gagnon is suffering from a hernia caused by the strain of the heavy lifting which he was doing for three weeks in the employ of William N. Pike & Sons at Haverhill; that there probably was a weakened condition here due to the heavy lifting involved in nine years of carpentering work; that the continued and repeated strain of the heavy lifting which he was doing for three weeks on the job at Haverhill gradually pushed the intestine through the inguinal ring; and that the hernia was completed by the sudden exertion of December 4, when he caught and held the 600 or 700 pound beam which slid back down the skids.

The committee finds that the employer had knowledge of the injury through the remark made by the employee to Spellman, when he asked for an advance of money to pay for his truss, the committee believing Gagnon's story of this incident to be true. While the law does not impose upon the employer an active vigilance in seeking out injuries among his employees, we believe that had Spellman acted as one would expect a reason-

able man, charged with the protection of the interests of his employer, to act, in view of such a remark, he would have become acquainted at that time with all the facts concerning the injury. Furthermore, in view of the nature of the injury, the employer's case was not prejudiced by the failure of the employee to make a formal report until January 15.

The committee finds that the injury which Gagnon received in the course of his employment, and which arose out of such employment, totally incapacitated him for work for a period of seven and two-sevenths weeks, for which time he is entitled to the maximum compensation of $10 a week, and that he is further entitled to compensation for a partial disability from March 6, when he went to work for the Walworth mill, up to the date of this hearing, a period of nine and four-sevenths weeks, at the rate of $5 a week, this being two-thirds of the difference between his present weekly wage and his weekly wage at the time of his injury. Compensation for partial disability is to continue during such time as his injury prevents him from earning a weekly wage equal in amount to that which he was earning at the time of such injury. The employee is further entitled to the payment by the insurer of the price of his truss and two visits to the doctor. Under this finding there is due the employee at the time of the hearing $120.71 for weekly compensation.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

FRANK J. DONAHUE.
JEREMIAH F. MAHONEY.

H. H. Chamberlain dissents.

Findings and Decision of the Industrial Accident Board on Review of Weekly Payments.

The claim for review of weekly payments under section 12, Part III., having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building,

Boston, Mass., on Wednesday, Nov. 17, 1915, at 2 P.M., and finds and decides as follows: —

It appears from the record that this employee received a personal injury arising out of and in the course of his employment on Dec. 4, 1914, and was awarded compensation by a committee of arbitration to May 11, 1915, said compensation to continue on a partial incapacity basis in accordance with his ability to earn wages for an indefinite period.

Partial compensation was paid to Aug. 10, 1915, at which time an operation was performed for the relief of the condition of hernia which incapacitated the employee. The operation was successful, and the insurer continued the weekly payments, on a total incapacity basis, until Sept. 27, 1915, at which latter date all payments were stopped.

The employee had been unable to perform any work until Nov. 8, 1915, at which time he obtained work as a weaver, claiming that he was then unable to perform his usual work as a carpenter.

The attorney for the employee stated that the employee was able, on Nov. 17, 1915, to perform his usual work.

Therefore we find, upon all the evidence, that the employee was totally incapacitated for work from Sept. 27, 1915, to Nov. 8, 1915, a period of six weeks; that he was partially incapacitated for work from Nov. 8, 1915, to Nov. 17, 1915; that there is due the employee $60 on account of total incapacity compensation, and $6.14 on account of partial incapacity compensation; and that the total sum due under this decision is $66.14.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.

CASE No. 1788.

HONORA E. MADDEN, *Employee.*
M. J. WHITTALL CARPET COMPANY, *Employer.*
AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. PRE-EXISTING DISEASE. AGGRAVATION AND ACCELERATION OF WEAK HEART CONDITION TO THE POINT OF INCAPACITY FOR WORK IS A PERSONAL INJURY UNDER THE STATUTE. PERSONAL INJURY DEFINED AND CONSIDERED. MATERIALLY BROADER THAN PERSONAL. INJURY BY ACCIDENT. INJURY CAUSED BY PULLING CARPET. ACCELERATION OF HEART CONDITION DUE TO EMPLOYMENT AS CONTRIBUTING PROXIMATE CAUSE. HARM NEED NOT BE ENTIRELY DUE TO EMPLOYMENT. ACT MAKES NO PROVISION FOR AWARD OF COMPENSATION ON BASIS OF THE EXCLUSION OF THAT PART OF THE INJURY WHICH FLOWED FROM PREVIOUS CONDITION. EMPLOYEE FULLY PROTECTED. PREVIOUS CONDITION OF HEALTH OF NO CONSEQUENCE IN DETERMINING AMOUNT OF RELIEF AFFORDED. ESSENTIAL CONNECTING LINK OF CAUSAL CONNECTION BETWEEN THE PERSONAL INJURY AND THE EMPLOYMENT MUST BE ESTABLISHED BEFORE THE ACT BECOMES OPERATIVE.

The record shows that the employee was engaged at her work in the carpet mills, repairing bad spots in the weaving of rolls of carpet, when her weakened heart condition became accelerated and aggravated by the strain of pulling or dragging the carpet over the table, and she became incapacitated for work by reason of such personal injury. The carpet was brought to the employee in a roll, and a bar was put through it. Two girls lifted it and placed it on the table. They undid the carpet, turned the back over and pulled it along. Later, they were required to turn the face, or wearing surface, over and take it to the shears. They were obliged to pull it along, and considerable exertion was needed. The employee was one of the two girls who were engaged in the performance of this work, and, as a result of the strain involved, a pre-existing condition of heart disease, which had not previously given her trouble, was lighted up and aggravated to the point of incapacity for work.

Held, that the acceleration of a previously diseased condition, by the pulling of the carpet, was a personal injury which arose out of the employment.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Appealed to Supreme Judicial Court.

Decision. — The Supreme Judicial Court affirmed the decision of the Industrial Accident Board.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Honora E. Madden *v.* American Mutual Liability Insurance Company, this being case No. 1788 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, William H. Rose, M.D., representing the insurer, and Michael F. Garrett, representing the employee, heard the parties and their witnesses in the City Hall, Room 30, Worcester, Mass., on Monday, April 12, 1915, at 1.30 P.M.

Frank F. Dresser appeared as counsel for the insurer, and John C. Mahoney appeared as counsel for the employee.

It was agreed that Honora E. Madden's average weekly wages were $11.89.

Honora E. Madden testified as follows: She is married and has two little girls, and their only support is what she earns. She does not know where her husband is, he has not contributed to her support since two years ago last May, when she left him. She worked for the Whittall Carpet Company about five weeks; previous to that she worked for her brother in his restaurant. Her brother is engaged in the restaurant business in Worcester. While she worked in the restaurant she did the cooking and waited on table. She never had any sickness; never lost any time with the exception of a week or so. Previous to working for her brother she worked for the Clinton Carpet Mill; the work there was entirely different from the work at Whittall's. She had no difficulty whatever with her work at the Clinton Carpet Mill, and was never sick while she worked there. She never was sick previous to the time that she went to work for the Whittall Carpet Company, that is, she was never laid up for any length of time; she had a little indigestion. She was treated by Dr. Hayden, who gave her some pills; that was previous to the time she went to work for the Whittall Carpet Company. During the five weeks she worked as a carpet stretcher she did not lose any time on account of sickness. She went to work on the morning of July

10, as she had every morning and worked up to the time she was taken with the pain; that was about 11.40 o'clock. She was pulling carpets at the time she felt something give. She thought it would pass away and did not think much of it. She continued to work until it was time to wash up. She heated her tea and then came back and sat down to eat her dinner. She could not eat, so she threw her dinner away and started to work again; then she felt something else give way. She went over to the window and called to one of the girls to get a drink of water for her. Dr. Carney was then called, and she was taken to the hospital. She thinks she was conscious all the time. Her work was more pulling than sewing work; the sewing part of the work was picking spots off the carpet and sewing little places that were out. The carpet was brought to them in a roll, and a bar was put through this roll and two girls had to lift it. They undid the carpet on that roll, turned the back over and had to pull it; then they had to turn the face of it over and it was taken to the shears. They had to pull it to them. They dragged them on the floor. There were some carpets that had to be put on the table, but not all of them. She had no idea what one of these rolls would weigh. She had not been sewing all morning on the day of the alleged injury; there is not as much sewing to do as pulling. When she speaks of pulling, she means dragging the carpet along over the table. She never had any attack before this one. She has had a little palpitation of the heart; she does not think that has existed for three years. When she was about fifteen years of age she had nervous trouble. She asked the doctor at the hospital what the trouble was, and he told her there was nothing the matter with her heart. When Dr. Hayden treated her he gave her some pills, but not for her heart, and she does not remember whether or not she had them with her on the morning of the accident. She came home from the hospital on September 1.

Mr. Mahoney read the following letter: —

WORCESTER, MASS., April 5, 1915.

To whom it may concern.

I have had Mrs. Madden under my care for grippe, miscarriage, nervousness, and, since the accident, I have had her several times for her heart. Also had her for indigestion.

JOHN J. HAYDEN, M.D.

Mrs. Madden complained of the hard work while she was working at the Whittall Carpet Company; she complained to Mr. Killerby, who was the boss in her department; she told him it was manual work, and he told her she would get used to it after a while.

Dr. Patrick J. Carney testified as follows: On July 10, 1914, he was called to the Whittall Carpet Company about 12.30 o'clock. He went there and saw Mrs. Madden. She had a sort of anxious expression on her face, had her hand on her left breast and complained of intense pain around the region of the heart. Her pulse was weak and rapid and quite irregular. On examination he thinks, but would not be positive, that he detected a murmur there, and mitral regurgitation. He gave her emergency treatment. When they took her away in the automobile she was taken with another and more severe attack, and was brought to the city hospital. That was all he saw of her until some time later, when she came to his office. He did not know her. He found that she had a marked mitral regurgitation. Hard, laborious work would produce a heart lesion. If there were any previous heart trouble it would accelerate it, in his opinion. He does not know how hard or laborious this work was that she was doing. He had no special knowledge of the work, except that they say they have to drag the carpets around. The second time she called him he gave her a tonic. He has not seen her since that time, up to the day of the hearing. He thinks she might have had some trouble before.

William Killerby testified as follows: He is foreman of the room in which Mrs. Madden worked. She was employed to repair carpets. There is a roll of carpet and that is put on a horse. The girls themselves put it on the horse; it is not too heavy. These rolls vary in weight from 7 or 8 pounds to 100 pounds. It was during the noon hour that the trouble occurred. He was in the yard and the boy ran up to him and told him that one of the girls was sick. He went up and Mrs. Madden was lying on the floor. They are not supposed to work during the noon hour. Sometimes they sew on one roll of carpet all day; it is not constant lifting — sometimes they do not lift four a day. They get the work just as it comes

from the looms. They have men to help the girls. When Mrs. Madden complained to him he told her if she needed help she would get it. Her work was satisfactory after she was there for a while; it was different work from what she did before. According to his time sheets she worked steadily every day during the five weeks she was there. There are always two girls to lift the rolls of carpet — one cannot lift it alone. They turn the carpet over themselves; they only need to turn a foot at a time, and that does not weigh much. When they have several yards they do not turn it all at once. They make the work as easy as they possibly can. He does not call it hard work; it is tedious work, but not hard. The girls take the work as it comes in the different grades. "They do not need to be pretty rugged to do the work."

Mrs. Willis testified as follows: She works in the room where Mrs. Madden was employed, and was doing the same kind of work. The work is as Mr. Killerby stated, and they are not supposed to do anything that is too heavy for them. They always call the man when they need him. The turning is quite easy. The carpet comes off the roll quite easily. They lift about a yard of carpet at a time; that weighs about 2 or 3 pounds. She saw Mrs. Madden on the morning of July 10. She was sewing most of the morning. She did not see her lift anything. After Mrs. Madden left the mill the witness finished her work. When she reached Mrs. Madden after the trouble she heard her say she "had an awful pain under her heart." She asked for some ice, which was given to her and she placed it over her heart. After the doctor came she was taken to the hospital. At the hospital she heard her tell the doctor that she had had this trouble before, "but never so bad as this time; this time is the worst I ever had." The witness is a regular employee of the Whittall Carpet Company. She calls for assistance any time she feels that she needs it — it is there for her. Mrs. Madden was not experienced enough to do all the grades of work at the mill.

Dr. Frederick Bryant testified as follows: He saw Mrs. Madden on Oct. 6, 1914, at 1255 Main Street. At that time he found that she was suffering from pain over the heart. Her pulse was rapid and weak, and she was crying out with severe

pain. She was in bed when he examined her, and he made a diagnosis of mitral regurgitation. He thought it was a chronic condition. She was suffering at this time from angina pectoris. Regarding her previous history he found that she had an attack of chorea, what is commonly called St. Vitus' dance; that is sometimes the beginning of heart trouble. He never saw her before October 6. He may have told her there was nothing the matter with her heart simply to quiet her at the time. He has seen her three times since October. She paid his bill.

Dr. Lemuel F. Woodward testified as follows: He examined Mrs. Madden at the request of the insurance company. When he went to see her she was up and dressed and working about the house. She told him that five weeks previous she was injured while pulling a carpet in the mill, and that she was taken to the City Hospital, where she remained until July 19. His diagnosis was angina pectoris, and second time, angina and intercostal neuralgia. On his examination he found a very faint murmur at the apex of the heart — the first sound of the heart — systolic. She told him of the work which she had been doing, and he did not think that that condition of her heart had anything to do with it. So far as he could tell the condition was of long standing.

Q. Is it possible, if a person has that condition, that she should faint or go through the trouble which she says she went through on July 10, without any outside, inducing cause? A. Yes. A person with angina pectoris may get these attacks at any time; they come on without any reference to work.

Q. Assuming that diseased condition of the heart existed over a long period of time, could that work and would that work be likely to aggravate the condition? A. Oh, yes; to the same extent any work would aggravate it.

Q. Is it not true that in these cases of mitral regurgitation these attacks may come on just in the natural course of events, with the wear and tear of the system? A. Certainly, without reference to any known cause.

Mrs. Emma Willard testified as follows: She has been with this company for twenty-two years. She was doing the same work which Mrs. Madden was doing. Mrs. Willis describes the work exactly as she understands it. The day Mrs. Madden was hurt she (Mrs. Madden) was working on small pieces of

work, the lightest work they have. She had been doing that almost all the morning. When she got the job she was to come to work on a certain day, and she could not come in until two days later. She said she was too sick to come in on the day she was supposed to come. She worked eight tables from her. When a girl is out they usually divide her work between them, and the remainder of Mrs. Madden's work was small work, all from 3 to 5 yards. These pieces of carpet are brought to the girls on a truck by a man, and he leaves them at their tables. They have to reach down for them. Mrs. Madden's work that morning was reaching down and picking up those small pieces. It is not necessary to bend over to get them, they all stand up. The pieces are all rolled up just about the height of the width of the carpet.

Alice Fleury testified as follows: She has worked at the Whittall Carpet Company for two years. She knew Mrs. Madden while she worked there. She heard the work described by Mrs. Willis, and she agrees that that is a correct description. On the day of the injury Mrs. Madden was working on the Brussels pieces. She told her that she generally took her pills with her, but she did not have them that day. Mrs. Madden never told her she had any ailment. The heaviest roll they ever lift is a 40-yard Wilton roll. They never lift it alone; another girl always helps them. She worked two or three tables from Mrs. Madden. She saw her all morning.

Mrs. John Seghrue testified that she has known Mrs. Madden for two years. When she first knew her she lived in the house next to her, and later moved into the same house with her. She knew she worked in a restaurant. She did not hear her complain about any sickness.

We find, therefore, on all the evidence, from the description of the work as given by the various witnesses and the weight of the medical testimony, that the work Mrs. Madden was doing on the day on which the injury was received so aggravated and accelerated a weak heart condition as to incapacitate her for work; that she received a personal injury arising out of and in the course of her employment; that she has been incapacitated; and that she is entitled to recover compensation from July 24, 1914, the fifteenth day after the accident,

up to and including April 12, 1915, the date of the hearing, a period of thirty-seven and 4-sevenths weeks at $5.95 a week, amounting to $223.55, and to medical and hospital treatment for the first fourteen days after the accident, counting the day of the accident as the first day.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

DUDLEY M. HOLMAN.
MICHEL F. GARRETT.

Dr. William H. Rose dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, June 24, 1915, at 2.45 P.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows and the Board finds that the employee, Honora E. Madden, received a personal injury arising out of and in the course of her employment on July 10, 1914, said personal injury aggravating and accelerating a weak heart condition to the point of total incapacity for work; that the employee was totally incapacitated for work as a result of such personal injury from July 10, 1914, to April 12, 1915, inclusive; that all incapacity for work resulting from said personal injury ceased on April 12, 1915; and that there is due the employee a weekly compensation of $5.95 for a period of thirty-seven and four-sevenths weeks from July 24, 1914, the fifteenth day after the injury, the total sum due under this decision being $223.55.

The requests for rulings of the insurer, appended herewith, are refused in so far as they are inconsistent with these findings.

With especial reference to No. 9, compensation is due an employee if the personal injury accelerates or aggravates a previously diseased condition to the point of incapacity for work, and compensation is due during the period that the employee is incapacitated by reason of such acceleration or aggravation.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

Insurer's Requests for Rulings.

1. On all the evidence the employee is not entitled to compensation.

2. On all the evidence the employee did not suffer a personal injury arising out of and in the course of her employment within the meaning of the Workmen's Compensation Act.

3. There is no evidence that the work which the employee was hired to do and was doing caused the disability of which she complains.

4. There is no evidence that the work which the employee was hired to do and was doing aggravated or accelerated her previous physical condition.

5. There is no evidence showing to what extent the work which the employee was hired to do and was doing aggravated or accelerated her condition.

6. The employee is not entitled to compensation for disability due to her physical condition existing before her employment by this employer.

7. The employee is not entitled to compensation due to her physical condition existing before the occurrence of the alleged injury.

8. The insurer or the employer, under the Workmen's Compensation Act, is required to pay compensation only to the extent that the injury received by the employee of itself causes

disability, and is not required to pay compensation for any disability due or traceable to the previous physical condition of the employee.

9. The Workmen's Compensation Act imposes liability to pay compensation only for disability due solely to and resulting solely from an injury arising out of and in the course of the employment, not for any consequences due to the previous physical condition of the employee. Where the disability is occasioned partly by the work injury and partly by the existing physical condition of the employee, whether the work injury has accelerated or aggravated the previous physical condition or not, the statute imposes liability only for that proportion of the disability due to the work injury.

FRANK F. DRESSER,
Attorney for Insurer.

Decision of the Supreme Judicial Court on Appeal.

RUGG, C.J. Honora E. Madden was an employee of a subscriber under the Workmen's Compensation Act, St. 1911, c. 751. The Industrial Accident Board found that, while engaged in the performance of the work for which she was hired, she "received a personal injury arising out of . . . her employment, . . . aggravating and accelerating a weak heart condition to the point of total incapacity for work." This finding, standing alone, might be considered indecisive. It simply is a categorical repetition of the words in the statute by which the result is reached entitling the employee to compensation, without a statement of what the personal injury was out of which grows the right to money payments. But, as the Industrial Accident Board "affirms and adopts the findings and decision of the committee of arbitration," resort may be had to the proceedings of that committee and the evidence there reported for the foundation of its conclusions. After reciting the substance of the evidence, most of which was uncontroverted except that from physicians, the finding of the arbitration committee was that "the work which Mrs. Madden was doing on the day on which the injury was received so aggravated and accelerated a weak heart condition as to incapacitate

her for work, and that she received a personal injury arising out of and in the course of her employment," whereby she was incapacitated. The personal injury and the circumstances under which it was received are set out in the evidence.

A finding was warranted that she had "a weak heart condition" before her injury and before she entered the service of the subscriber. Her work for it was to repair bad spots in the weaving of rolls of carpet. The roll was placed on some device near by, and she pulled the carpet along and over a table in front of her. Her own description was that "Her work was more pulling [that is, dragging the carpet along over the table] than sewing, . . . The carpet was brought to them in a roll, and a bar was put through this roll and two girls had to lift it. They undid the carpet on that roll, turned the back over and had to pull it; then they had to turn the face of it over and it was taken to the shears. They had to pull it to them. They dragged them on the floor. There were some carpets that had to be put on the table, but not all of them. . . . She had not been sewing all morning on the day of the alleged injury; there is not as much sewing to do as pulling. . . . She had never had any attack before this one." Her description of the "personal injury" (Part II., §1), on which the claim is founded, was this: "She went to work on the morning of July 10, as she had every morning, and worked up to the time she was taken with the pain; that was about 11.40 o'clock. She was pulling carpets at the time she felt something give. She thought it would pass away. . . . She continued to work until it was time to wash up. She heated her tea . . . and sat down to eat her dinner. She could not eat, so she . . . started to work again; then she felt something else give way," and she was taken to the hospital. Other witnesses testified that the employee exclaimed that she "had an awful pain under her heart" and that she placed some ice over her heart. It might have been inferred from this and other evidence that she suffered an attack of "*angina pectoris*," which is defined in Webster's International Dictionary as a "peculiarly painful disease . . . usually associated with organic change of the heart." There was, also, medical testimony to the effect that "Hard, laborious work would produce a heart lesion. If there were any

previous heart trouble it would accelerate it." The question is, whether reasonable men could draw an inference that this was a personal injury received by the employee arising out of her employment. We are not concerned with the inquiry whether there are other inferences, or whether this is the most reasonable one.

Rational minded persons endeavoring to get at the truth might have found upon this evidence, with the deductions reasonably to be drawn from it, that the employee, being under some degree of disability due to a weak heart, suffered by reason of exertion in pulling the carpet, as required by her contract of service, and further acute impairment of the strength of the heart, whereby it was disabled from performing its normal functions as it had done theretofore. This was a damage to a physical organ. It was definite and specific detriment to the physiological structure of her body.

The standard established in this respect by our Workmen's Compensation Act as the ground for compensation is simply the receiving of "personal injury arising out of and in the course of" the employment. This standard is materially different from that of the English act and of the acts of some of the States of this nation, which is "personal injury by accident," both in the act of 1897 and 1906. (See 60 and 61 Vict. 1897, c. 37, §1 (1); 6 Edward VII., 1906, c. 58, §1 (1).)

The difference between the phraseology of our act and the English act in this respect cannot be regarded as immaterial or casual. The English act in its present form was passed several years before ours. It was known to the Legislature which enacted our statute, and was followed as to its general frame and in many important particulars. (Gould's Case, 215 Mass. 480, 486; McNicol's Case, 215 Mass. 497, 499.) Indeed, "the language of the English act of 1897 was followed whenever possible." (See "Report of Commission on Compensation," 1912, p. 46.) This difference must be treated as the result of deliberate design by the General Court after intelligent comprehension of the limitation expressed by the words of the English act. The freer and more comprehensive words in our act must be given their natural construction with whatever added force may come from the intentional contrast in phrase-

ology with the English act. The "personal injury by accident," which by the English act is made the prerequisite for the award of financial relief, is narrower in its scope than the simple "personal injury" of our act. As was said in Fenton *v.* J. Thorley & Co., Ltd., 1903 A. C. 443, at 448, "the words 'by accident' are . . . introduced parenthetically as it were to qualify the word 'injury,' confining it to a certain class of injuries, and excluding other classes, as, for instance, injuries by disease or injuries self-inflicted by design." To the element of "personal injury" the further condition is added, that it must have been received as "an unlooked for mishap or an untoward event which is not expected or designed," and to this have been appended the words "by the workman himself" in Trim Joint District School Board of Management *v.* Kelly, 1914 A. C. 667, 679, whereby injuries "designed" by persons other than the workman are included within the act. An illustration of the difference between "personal injury" and "personal injury by accident" put by Lord Reading, the present Chief Justice of England, in the case last cited, at page 720, is apposite in this connection. "For example, if a workman became blind in consequence of an explosion at the factory, that would constitute an injury by accident; but if in consequence of the nature of his employment his sight was gradually impaired and eventually he became blind, that would be an injury, but not an injury by accident."

The wide divergence between a simple "personal injury," the standard of our act, and the "personal injury by accident" of the English and other acts is exemplified further by reference to some of the decisions. It was held in Steel *v.* Cammell, Laird & Co., Ltd., 1905, 2 K. B. 232, that lead poisoning resulting from a gradual accumulation of the poison in handling lead; in Broderick *v.* London County Council, 1908, 2 K. B. 807, that enteritis from inhaling sewer gas in the course of the employment; in Eke *v.* Hart-Dyke, 1910, 2 K. B. 677, that ptomaine poisoning from clearing out cesspools were not within the act. As we understand those judgments, each one rests on the ground that there was a "personal injury," but that it was not "by accident," and hence there could be no recovery. If the words "by accident" had been omitted from the English

act, the inference seems irresistible from the chain of reasoning adopted in each of these judgments that a different judicial result would have been reached. That a different result seems to us inevitable is manifest from the course of reasoning and the conclusion in Hurle's Case, 217 Mass. 223, and Johnson's Case, 217 Mass. 388. In any event, decisions made as to workmen's compensation acts which base compensation upon "personal injury by accident" instead of upon "personal injury" well may be, and may be expected to be divergent from our own and compensation be denied under them which would be awarded under ours. (See Liondale Bleach, Dye & Paint Works *v.* Riker, 85 N. J. L. 426, and Adams *v.* Acme White Lead & Color Works, 182 Mich. 157.) Although the Ohio act in this respect is similar to ours, the history and terms of the Ohio constitutional amendment touching the subject, and of the governing statute and construction placed upon it by the administrative board, led to an interpretation of intent to restrict the operation of that act to personal injuries by accident by a chain of reasoning which has no relevancy to our act. (Industrial Commission of Ohio *v.* Brown, 91 Ohio, ——.) If there is anything in any of the three decisions last cited inconsistent with our conclusion we are constrained not to follow them.

Actions for personal injury arising from disease contracted in the course of employment and without physical impact are not uncommon where the other elements exist to establish liability. (Thompson *v.* United Laboratories, 221 Mass. 276; Cox *v.* American Agricultural Chemical Co., 24 R. I. 503; Wagner *v.* Jayne Chemical Co., 147 Pa. St. 475; Fox *v.* Peninsular White Lead & Color Works, 84 Mich. 676, 682.) That they have not been more frequent, perhaps has been due to the fact that such dangers usually are well known and are assumed by the contract of employment, or are not matters about which a duty has been owed by the employer.

"Personal injury" is materially broader in its scope than is "personal injury by accident." "Personal injury" standing by itself comprehends a wide range of physical harm. Indeed, the phrase has been extended in other connections to comprise a large category of mischiefs which have a theoretical rather than corporeal adjunction to the human body, and which may be

intangible or mental rather than tactile and physical. It may comprehend damage to those inherent personal rights which generally are recognized as protected by the law and as sacred as the security from bodily violence. Doubtless many decisions include among personal injuries wrongs which would not be personal injuries under the Workmen's Compensation Act. For example, the phrase "personal injury" has been held to include even injuries to reputation resulting from libel. (Thompson *v.* Judy, 95 C. C. A. 51, 54), malicious prosecution and false imprisonment (McChristal *v.* Clisbee, 190 Mass. 120), invasion of the right to privacy (Riddle *v.* MacFadden, 201 N. Y. 215), as well as the alienation of affection of a husband or wife, seduction, false arrest and kindred tortious acts. That was pointed out in Hurle's Case, 217 Mass. 223, after a considerable review of the authorities. It was there expressly held that a disease of the eyes directly induced by inhalation of poisonous gases in the course of the employment might be found to be "a personal injury" "arising out of" the employment. To the same effect in substance is Johnson's Case, 217 Mass. 388. These cases hold that it is not necessary to "personal injury" that there be a physical impact. That was adjudged also, with a full review of the English decisions, in Coyle or Brown *v.* John Watson, Ltd., 1915 A. C. 1, 12 to 14. Even liability for personal injury arising out of tort is not always restricted to cases of physical impact. This was shown by Chief Justice Knowlton in Mulvey *v.* Boston, 197 Mass. 178, 180. (See Megathlin *v.* Boston Elevated Railway, 220 Mass. 558.) There is nothing at variance with these in Spade *v.* Lynn & Boston Railroad, 158 Mass. 285, S. C. 172 Mass. 488, which was an action for negligence, and where, on the facts presented, it was held that there could be no recovery for mental disturbance without physical injury. In other connections "damage to the person" has a more constricted signification, which excludes indirect and consequential injury ensuing from immediate bodily harm to another. (See, for example, Dixon *v.* Amennan, 181 Mass. 430; Hay *v.* Prime, 197 Mass. 272; Keating *v.* Boston Elevated Railway, 209 Mass. 278, 282.) These and like decisions do not affect the case at bar.

Varying facts may give rise to questions of difficulty. In this

connection it is to be noted that there is no explicit provision for compensation for occupational disease as such. "Personal injury" is the only ground for compensation. The legislative principle declared by the Workmen's Compensation Act, to the test of which all cases arising under it must be subjected, is that whatever rightly is describable as a "personal injury," if received "in the course of and arising out of" the employment, becomes the basis of being a claim.

If the harm suffered by the employee in the case at bar had been received as the result of physical endeavor or strain in striving to resist tortious contact by the employer, or in merely being subjected to such conduct, there would be little doubt that recovery could be had in an action at law as for a "personal injury" in the common-law sense of those words. (Coleman *v.* New York, New Haven & Hartford Railroad, 106 Mass. 160, 178; Larson *v.* Boston Elevated Railway, 212 Mass. 262, and cases collected; Wermert *v.* Boston Elevated Railway, 216 Mass. 598.)

Without undertaking to define "personal injury," or to go beyond the requirements of the facts here presented, it is enough to say that the occurrence described by the dependent when she said "she felt something give" and "felt something else give way," accompanied by the symptoms of *angina pectoris*, may have been found to be a "personal injury."

That injury also may have been found to have arisen out of the employment. The pulling of the carpet, although not requiring such putting forth of muscular power as would have affected a healthy person, yet may have been enough to cause the injury which the employee suffered. It could have been regarded as resulting from the work as a contributing proximate cause. (McNicol's Case, 215 Mass. 497, 499; Brightman's Case, 220 Mass. 17; Fisher's Case, 220 Mass. 581.)

Even under the English act it seems that a personal injury such as that here disclosed would be held to have arisen "by accident," and hence within that act. It has been decided that perforation of a diseased intestine by slight pressure such as would be harmless to a healthy person (Woods *v.* Wilson, Sons & Co., Ltd., 84 L. J. Rep. (House of Lords) 1067), the breaking of an aneurism by normal activity of the workman (Clover,

Clayton & Co., Ltd., *v.* Hughes, 1910, A. C. 242), rupture resulting from ordinary exertion (Fenton *v.* J. Thorley & Co., Ltd., 1903, A. C. 443), and pneumonia induced by exposure (Coyle or Brown *v.* John Watson, Ltd., 1915, A. C. 1), were "personal injuries by accident." None of these instances come within the occupational diseases described in the Third Schedule of 6 Edward VII., c. 58, and hence these decisions are quite pertinent as persuasive authorities in a case like the present.

It has been argued with force on behalf of the insurer that since the harm to the employee was not wholly the effect of the work, but came in large part from the previous weakened condition of the employee's heart, hence either there can be no award of compensation, or it should be restricted to that part of the injury which resulted directly from the work, and the part of the injury which flowed from the previous condition should be excluded. Even though the premise be sound, the conclusion does not follow. The act makes no provision for any such analysis or apportionment. It protects the "employee." That word is defined in Part V., section 2, as including "every person in the service of another under any contract of hire," with exceptions not here pertinent. There is nothing said about the production being confined to the healthy employee. The previous condition of health is of no consequence in determining the amount of relief to be afforded. It has no more to do with it than his lack of ordinary care or the employer's freedom from simple negligence. It is a most material circumstance to be considered and weighed in ascertaining whether the injury resulted from the work or from disease. It is the injury arising out of the employment, and not out of disease of the employee, for which compensation is to be made. Yet it is the hazard of the employment acting upon the particular employee in his condition of health, and not what that hazard would be if acting upon the healthy employee or upon the average employee. The act makes no distinction between wise or foolish, skilled or inexperienced, healthy or diseased employees. All who rightly are describable as employees come within the act.

The act is not a substitute for disability or old-age pensions. It cannot be strained to include that kind of relief. Its ulti-

mate purpose simply is to treat the cost of personal injuries incidental to the employment as a part of the cost of the business. It does not afford compensation for injuries or misfortunes, which simply are contemporaneous or coincident with the employment, or collateral to it. Not every diseased person suffering a misfortune while at work for a subscriber is entitled to compensation. The relief is so new that the tendency may be to inquire only as to the employment and the injury, and to assume that these two factors constitute ground for compensation. But the essential connecting link of direct causal connection between the personal injury and the employment must be established before the act becomes operative. The personal injury must be the result of the employment and flow from it as the inducing proximate cause. The rational mind must be able to trace the resultant personal injury to a proximate cause set in motion by the employment and not by some other agency, or there can be no recovery. In passing upon this question, a humanitarian emotion ought not to take the place of sound judgment in the weighing of evidence. The direct connection between the personal injury as a result and the employment as its proximate cause must be proved by facts before the right to compensation springs into being. A high degree of discrimination must be exercised to determine whether the real cause of an injury is disease or the hazard of the employment. A disease which under any rational work is likely to progress so as finally to disable the employee, does not become a "personal injury" under the act merely because it reaches the point of disablement while work for a subscriber is being pursued. It is only when there is a direct causal connection between the exertion of the employment and the injury that an award of compensation can be made. The substantial question is whether the diseased condition was the cause or whether the employment was of approximate contributing cause. In the former case no award can be made; in the latter, it ought to be made. This in substance is the test stated in McNicol's Case, 215 Mass. 497, 499. It must be applied here, as in other cases. In this respect the same rule governs as under the English act, where acceleration of a diseased bodily condition to the point where it constitutes a per-

sonal injury by reason of the strain or exertion of the employment is ground for recovery. (See Clover, Clayton & Co., Ltd., *v.* Hughes, 1910, A. C. 242, 243, and like cases cited above.)

This point is governed by Brightman's Case, 220 Mass. 16. The insurer asks us to review Brightman's Case, and especially the sentence at page 20, where it is said: "Acceleration of a previously existing heart disease to a mortal end sooner than otherwise it would have come is an injury within the meaning of the Workmen's Compensation Act." Of course that sentence was applied in its context to an acceleration directly traceable to the employment as the cause. It expressed the deliberate and matured judgment of the court. There is not thereby imported into the Workmen's Compensation Act any theory of the law founded upon wrongdoing of the employer. It is plain, and has been said repeatedly, that the act eliminates all consideration of tort, penalty or negligence, save where there has been "serious and willful misconduct." (See Murphy's Case, *ante.*) It establishes a unique theory of distribution of the human loss directly arising out of commercial and industrial enterprise hitherto unknown to our law. When a preexisting heart disease of the employee is accelerated to the point of disablement by the exertion and strain of the employment, not due to the character of the disease acting alone or progressing as it would in any rational work, there may be found to have been a personal injury.

It is contended that since the act contemplates a kind of accident insurance as the means of affording relief to the employee, it cannot have been the intent of the Legislature to include such risks as that here disclosed, because of the difficulty of fixing a rate of insurance. But there does not appear as matter of law to be any insuperable difficulty in this respect. Fortuitous events, which appear to be as difficult of forecast as this, are common subjects of insurance.

It is argued that grave economic consequences of far-reaching effect may follow from the act as thus construed. It is said that persons not in good health may be altogether excluded from employment to their severe hardship, while the cost of conducting commercial and industrial enterprises may become

prohibitively large, all to the detriment of the general welfare and of the financial resources of the Commonwealth. These considerations are of great public moment. But these factors relate to legislative questions, and the arguments founded on them are distinctly legislative arguments. They may be entitled to attention and deliberation at the hands of the legislative department of government. In the present forum they cannot have decisive significance, even if it were plain that the enumerated consequences were inevitable. The function of the judicial department of the government is simply to determine whether an act is within the power vested by the Constitution in the Legislature, and then to enforce it according to its true meaning in cases as they arise. While the consequences to which a particular construction or application of a statute would lead have an important bearing in determining what may have been the intent of the Legislature in using words of doubtful import (Greene *v.* Greene, 2 Gray, 361, 364), they cannot control a plain rule of positive law established by clear language in a legislative mandate. The words "personal injury" had meaning in the law prior to the passage of the Workmen's Compensation Act sufficiently definite and well defined clearly to include the kind of personal harm here disclosed, so that it hardly can be assumed, under all the circumstances, that the Legislature used them in a different or unusually constricted sense. There are no conditions which warrant a judicial interpretation of the words "personal injury" in the act as meaning the same as "personal injury by accident" or as excluding from the scope of "personal injuries" those instances where a diseased and physical condition may have invited, or rendered the employee unusually susceptible to, "personal injury." It may be that the Legislature intended a more narrow field than actually was described by the words used. But if that be so, the remedy must be sought from the Legislature. There are no means by which the court can ascertain "the purpose and effect of a statute except from the words used when given their common and approved meaning." (Bergeron, Petitioner, 220 Mass. 472, 475.)

The constitutionality of the act as thus interpreted is assailed. It is urged that the employer is compelled to part with

property for causes for which he is in no wise responsible, and that thus he is deprived of property without due process of law. In its essence that is an attack upon the act as a whole, for in none of its ordinary aspects does the payment required by the act depend upon fault, and may be required in many cases where the employer was wholly free from fault. In support of this attack, cases like Camp *v.* Rogers, 44 Conn. 291, Dougherty *v.* Thomas, 174 Mich. 371; Ohio & Mississippi Railway *v.* Lackey, 78 Ill. 55, Commonwealth *v.* Herr, 229 Pa. St. 132, and Eastman *v.* Jennings-McRea Log Co., 69 Ore. 1, are relied upon where statutes have been stricken down which have undertaken to make one liable in an action at law for injuries, losses or expenses for which he was in no way responsible directly or remotely, morally or legally. The case at bar is quite distinguishable. The Workmen's Compensation Act is elective and not compulsory. It is wholly optional with the employer, as it is with the employee, whether he comes under the provisions of the act or stays outside and stands on his legal rights. The connection between the employment and the injury in the case at bar is the same in kind as in the manifold other instances where the personal injury to the employee is caused by a definite physical blow wholly without fault of the employer. The act is not unconstitutional in this respect. (Opinion of Justices, 209 Mass. 607; Young *v.* Duncan, 218 Mass. 346, 351.)

The reasons which have been set forth in this opinion and in the cases to which reference has been made seem to us to compel the conclusion that on the evidence here disclosed it was competent for the Industrial Accident Board to find that the employee had received a "personal injury in the course of and arising out of" her "employment," according to the true meaning of these words in the Workmen's Compensation Act.

Decree affirmed.

CASE No. 1792.

JOHN O'NEIL, *Employee.*
HUGH NAWN CONTRACTING COMPANY, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. INTOXICATION. EMPLOYEE HAD INDULGED IN INTOXICANTS ON MORNING OF INJURY, BUT NOT DURING THE AFTERNOON. INJURY NOT DUE TO INTOXICATION. COMPENSATION AWARDED.

The employee received a personal injury while engaged in driving a wagon for his employer at about 5 o'clock in the afternoon. The weather was icy and sleety and the streets were very slippery. The employee stated "when the wheels in the front slipped, I lost my footing on the footboard and was thrown forward. I reached for the strap coming from the breeching and tried to save myself, but the horse started up and threw me from the team." He had taken two drinks of whiskey and one beer during the morning, but had not indulged in intoxicants during the afternoon. The house officer at the City Hospital testified that the employee was irrational at the time of his admission, and that in his opinion his irrationality was due to acute alcoholism.

Held, that the employee's injury arose out of the employment.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John O'Neil *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1792 on the files of the Industrial Accident Board, reports as follows: —

The arbitration committee, consisting of Thomas F. Boyle of the Industrial Accident Board, chairman, William J. Sullivan, representing the employee, and W. Lloyd Allen, representing the insurance company, heard the parties and their witnesses in the Board Room of the Industrial Accident Board, New Albion Building, Boston, Mass., on Tuesday, April 27, 1915, at 10 A.M.

Gay Gleason appeared as counsel for the insurer. The employee was not represented by counsel.

It was agreed that John O'Neil received an injury on Feb. 1, 1915, while in the employ of the Hugh Nawn Contracting

Company, and that his average weekly wages were $12. He was taken to the Boston City Hospital where they found he was suffering from multiple lacerated wounds of right hand, including compound dislocation of distal phalangeal joint of right third finger. His right foot was crushed, which necessitated the amputation of his great toe at proximal phalangeal joint, amputation of third toe, and amputation of second toe at proximal joint. The fourth toe was badly lacerated at base on plantar surface, and a lacerated wound extended on to dorsum of foot.

The only question in this case is whether the employee was intoxicated at the time the accident happened.

John O'Neil, the employee, testified: —

On the first of February, 1915, I was coming in from Paul Gore Street, Jamaica Plain, with a load of crushed stone from Hugh Nawn's ledge. When I got down by Hoggs bridge I found my team was on the rails, and when I tried to get out on one side the wheel slipped and threw me from the team. The day I was injured was an icy, sleety day and the streets were very slippery. When the wheels in the front slipped I lost my footing on the footboard, and was thrown forward. I reached for the strap coming from the breeching and tried to save myself, but the horse started up and threw me from the team. I had two drinks that day, one at ten minutes past 7 in the morning and the other one about 11 o'clock. It was 5 o'clock in the afternoon when the accident happened. I did not take any dinner with me that day because I did not expect we would have work on account of the bad weather. No one was on the team with me that day, and I do not know of anybody that saw the accident. The first drink I had was whiskey, and at about 11 I had a whiskey and a beer. I do not drink regularly. Sometimes I do not take anything at all. I was not intoxicated at the time of the accident. I left the hospital as a regular patient on the 14th of March, but I still go to the hospital for treatment.

Dr. Charles O. McCormick testified: —

I have been at the Boston City Hospital since 1913, and am at present house officer in the second surgical service. On Feb. 1, 1915, Mr. O'Neil was received at the hospital. I saw him at the hospital about ten minutes after he arrived there. When I was called down to see him I found his right hand badly lacerated and bleeding, and also the right foot had been badly mangled. Mr. O'Neil was unable to answer any question which I put to him, and after making an examination of his hand, reflexes, etc., I came to the conclusion that he was intoxicated, and I could smell alcohol on his breath. He did not complain of pain. On examination I could not find

any evidence of a blow to the hand, and I found his reflexes normal. When I first examined the man I put it down in the books that this man was intoxicated. I could not find anything else that would account for his semi-conscious condition. If a man is alcoholic he does not suffer pain. We could have performed the operation without giving him an anæsthetic because of the condition he was in from alcohol, and he would not have suffered much pain. I had difficulty in getting answers to questions I asked him, and he muttered indefinitely. He was irrational when he came in. I made a complete physical examination of this man, and I came to the conclusion that the irrationality was due to acute alcoholism. There were other doctors present when I examined him, but I do not remember who they were. When a man comes in in an irrational state of mind we examine his head for bruises or hemorrhages, and we examine the reflexes and pupils, to determine the cause of his mental condition. If this man had a drink of whiskey at 7 o'clock in the morning, and another at 11 o'clock in the morning, I would not expect to find alcohol on his breath to such an extent as I actually did find it. If this man did not have anything to eat during the day I would not expect to find the intoxication last as long as if he had been drinking and eating. The liquor which he said he had at 11 o'clock in the morning would be assimilated quicker in the absence of food. As far as the reflexes go, I could not distinguish whether this man was suffering from cerebral trouble or alcoholism, because under the influence of alcohol the reflexes are absent. They are subnormal, and are as low as we can bring them with any stimulant. In the case of cerebral hemorrhage, the reflexes might be present on one side and absent on the opposite side. If this man was dead drunk I would expect to find his reflexes absent, but he was not. I found his reflexes normal. He did not have alcohol enough to knock him out. When a man is dead drunk he is just the same as a man taking a big dose of morphine. His respiration and pulse is gone. He is unconscious. I do not think Mr. O'Neil was given any alcohol while in the ambulance because we do not administer stimulants in the ambulance.

The evidence shows that the employee, John O'Neil, received a personal injury arising out of and in the course of his employment on Feb. 1, 1915, the injury occurring while the employee was engaged in driving a wagon at about 5 o'clock in the afternoon. The weather was icy and sleety and the streets were very slippery. The employee had taken two drinks of whiskey and one beer during the morning, but had not indulged in intoxicants during the afternoon. Dr. Charles O. McCormick, house officer at the Boston City Hospital, testified that the employee was irrational at the time of his admission to the hospital, and stated that in his opinion his irrationality was

due to acute alcoholism. The employee testified that he was not intoxicated at the time of the occurrence of the injury.

The committee of arbitration finds upon all the evidence that the personal injury received by the employee on Feb. 1, 1915, arose out of and in the course of his employment, and that said personal injury was not caused by reason of intoxication; that the employee is now totally incapacitated for work and is, therefore, entitled to compensation for total disability from the fifteenth day after the injury, Feb. 15, 1915, up to the date of the hearing, April 27, 1915, a period of ten and one-seventh weeks, at the rate of $8 a week, his average weekly wage being $12, which amounts to $81.14, said compensation to continue during total incapacity which is not now determinable; that there is due this employee additional compensation on account of the specific injuries received, but by reason of the fact that the injuries are not healed at the present time, and that their extent cannot now be determined fully, the committee leaves the matter of the specific compensation open, to be decided by the Board at a later date, if the parties cannot agree upon the amount due.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

THOMAS F. BOYLE.
WILLIAM J. SULLIVAN.
W. LLOYD ALLEN.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, May 27, 1915, at 11 A.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the

case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows and the Board finds that the employee, John O'Neil, received a personal injury arising out of and in the course of his employment on Feb. 1, 1915; that said injury was not caused by reason of a condition of intoxication; that the employee is now totally incapacitated for work by reason of the personal injury received on Feb. 1, 1915; that the duration of said total incapacity for work is not now determinable; that the average weekly wages of the employee at the time of the injury were $12; that there is due the said employee from the insurer a weekly compensation of $8, dating from Feb. 15, 1915, during the continuance of his total incapacity for work; that there is due, also, additional compensation on account of the specific injuries received, the exact amount not now being determinable, the Board reserving the right to award such additional compensation at a later date, upon review, under Part III., section 12, of the statute.

The following requests of the insurer for rulings are refused: —

1. Upon all the evidence the Board must find that the employee was intoxicated at the time of the accident.

2. If the employee was intoxicated at the time of the accident he is not entitled to compensation.

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD.,

By its Attorneys,
SAWYER, HARDY, STONE & MORRISON.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
DAVID T. DICKINSON.
JOSEPH A. PARKS.
THOMAS F. BOYLE.

CASE No. 1796.

SALVATORE AMODIO, *Employee.*
JOHN S. LANE & SON, *Employer.*
ROYAL INDEMNITY COMPANY, *Insurer.*

ABILITY TO EARN. INCAPACITY FOR WORK. EMPLOYER WILLING TO FURNISH LIGHT WORK. EMPLOYEE IS ABLE TO PERFORM SOME WORK. ABILITY TO EARN CAN BE MEASURED ONLY BY TRIAL. COMPENSATION AWARDED ON THE BASIS OF ABILITY TO EARN, AFTER RETURN TO WORK.

The employee received an injury which left him with only 20 per cent. of the normal rotation of the radius on the ulna. He is unable to use the arm in the proper manner. The impartial physician stated that the employee could do some work, although he would probably have to be favored for a time. Just how much he could do would be shown after he returned to work and had been put to a practical test. His employer was willing to furnish the claimant with work which he could perform.

Held, that the employee's future rights were on a partial incapacity basis, in accordance with his actual earning ability.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Salvatore Amodio *v.* Royal Indemnity Company, this being case No. 1796 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Andrew Lopardo, representing the employee, and Frederick A. Ballou, representing the insurer, heard the parties and their witnesses in the Selectmen's Room, Town Hall, Westfield, Mass., on Monday, May 17, 1915, at 10.30 A.M.

Arthur H. Stetson appeared as counsel for the insurer, and Sylvester P. Callanan appeared as counsel for the employee.

It was agreed that Salvatore Amodio was employed as a quarryman by John S. Lane & Son of Westfield; that on June 30, 1914, while in the scope of his employment, as his car was leaving the scales, he noticed that the crusher was blocked, and in trying to stop his car dumping, his left arm was caught between the car and the upright timber supporting the roof, and he sustained a compound fracture of the left arm between

the wrist and the elbow. His average weekly wages were $12.60 and he was entitled to the payment of compensation at the rate of $6.30 a week. He had been paid $210 compensation and $37 for medical services.

The insurance company claims that he is no longer totally incapacitated and should do some light work.

It appeared in evidence that Salvatore Amodio worked for John S. Lane & Son, who were trap rock people; that it was his duty to lift rocks and put them on the car. The big ones were lifted by hand and the little ones by an 8-tine fork, while the dirt was shoveled from one point on the ground to another point. Three other men worked with him. They were coupling the car when the boss told him to take something away from the wheels. He could not move out of the way of the car and was hurt. He has done no work since the accident — he tried, but could not. He tried to work with the shovel in his own yard, but could not do so. He has not reported to John S. Lane & Son for work at any time since the accident occurred.

Dr. Charles F. Lynch, qualified, stated that he had examined Amodio and found scars and evidences of an operation. The radius and the ulna were fused at the point of fracture, and there was only 20 per cent. of the normal rotation of the radius on the ulna. He is unable to use the arm in the proper manner. There is a paralysis of the long muscle which supplies the thumb with its greatest power. The real action of the thumb is lost, due to the paralysis of this muscle, which takes its origin high up in the arm in the vicinity of the fracture. It is due to the destruction of the nerve supply to that muscle and not to pressure. He is unable to forcibly grip anything. The short muscles of the thumb are normal, and this gives him certain motions of the thumb. He examined the employee three weeks ago. The wound was then open and discharging pus, and he took out a small fragment of the bone.

Under cross-examination he stated that he did not know exactly what this man could do, but he thought he could lift up stones weighing 20 pounds. In response to a question by the chairman he said that it was very questionable what an operation might do. It probably would improve the condition somewhat. Amodio had a good result from a very bad injury.

Amodio further testified that he is right-handed, but he uses both hands in shoveling.

Harry C. Lane testified that he is engaged in quarrying and crushing trap rock. He stated that the body of the car sets up 2 feet, and there were side boards 18 inches high. There may have been three or four men working with Amodio. The car weighs from 4 to 8 tons when loaded. Amodio had not applied for work, but Mr. Lane stated that he was willing to take him back, and would favor him as much as he could.

Dr. Frederick B. Sweet stated that he made two examinations of Amodio. The first examination was made on March 5, when the man's condition was practically identical with his condition on the date of the hearing. He got a good result in the arm. He has a fusion of his bones at the fracture. There was a practical loss of rotation and impairment of the muscles of his thumb. There was, however, compensation by the rotation of the arm from the shoulder. As for the thumb, there was a weak grip. There was considerable impairment of the distal bone, as Dr. Lynch stated. He does not think Amodio will be able to work ten hours a day now, — it will be some time before he will be able to do it, — but his arm will not gain until he does go to work. He could have gone to work on March 5 as well as now.

Under cross-examination he stated that his answer would depend on the condition of the arm, the amount of pus and the size of the bone that was taken out several weeks later by Dr. Lynch. On March 5 there was no evidence of it, but it was undoubtedly there. The condition of the thumb differs from the condition of the fingers. He has an added disability in the thumb. It is not necessary to grip with the distal phalange of the thumb. He would not advise him to undergo an operation, as it is very doubtful whether he would be benefited by it, and it might be made worse. The doctor added that he would not expect Amodio to work while there was a pus formation in his arm.

Dr. Lynch, recalled, stated that the muscle that was injured was an individual muscle, entirely separated from the other muscles leading to the other fingers, and there was considerable disablement. He felt that the man could do some work, although he would probably have to be favored for a time. Just

how much he could do could only be ascertained after he had returned to work and had been put to a practical test.

We find, therefore, on all the medical evidence and the surrounding circumstances, that Amodio's period of total incapacity has ceased on the day of the hearing; that he should be advised to return to work which his employer is willing to furnish, and that his compensation for partial incapacity will be fixed by the amount that he is actually able to earn after he has returned to work. But there is a permanent impairment, and just what his capacity will be can only be determined by his future actions.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

DUDLEY M. HOLMAN.
FREDERIC A. BALLOU.
ANDREW LOPARDO.

CASE No. 1805.

THOMAS COYNE, *Employee.*
CITY OF LYNN, *Employer.*

ARISING OUT OF THE EMPLOYMENT. BURDEN OF PROOF. EMPLOYEE DOES NOT SUSTAIN BURDEN OF PROVING THAT HE RECEIVED INJURY, AS CLAIMED. CLAIM DISMISSED.

The employee claimed to have received an injury on Sept. 1 or Sept. 2, 1914. The time records showed that he was not employed by the city of Lynn after Aug. 29, 1914. The employee claimed that he told the timekeeper about the injury, and that certain witnesses saw the injured thumb at the time. The timekeeper and one of the employees denied that they saw the thumb, or that the employee had ever brought the injury to their attention.

Held, that the employee had not sustained the burden of proving his claim.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Thomas Coyne *v.* City

of Lynn, this being case No. 1805 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, representing the Industrial Accident Board, chairman, William A. Nealey, representing the employee, and Harry T. Turner, representing the employer, heard the parties and their witnesses at City Hall, Lynn, Mass., on Wednesday, April 21, 1915, at 1.30 P.M.

James F. Maloney appeared for the employee, and Earl C. Jacobs appeared for the city of Lynn.

Thomas Coyne, a stone mason, claimed that he sustained an injury to his right thumb on Tuesday, Sept. 1, 1914, by reason of its being crushed between two stones at Breed's Pond as he was rolling a stone, weighing about 200 pounds, in place. Cornelius Murphy was assisting him at the time, and saw the injury. The finger bled some and the nail was split. He went to find Mr. McEnaney, the timekeeper, but he was not on the ground at the time; the injury occurred about 9.30 o'clock, and he did not see him until about two hours later. He had put a piece of rag, torn from the lining of his coat, upon the thumb, which Mr. McEnaney removed when he saw the finger, bandaging it up with a piece of his handkerchief which he took from his pocket, and saying that the box, which contained what was necessary in such a case, was too far away. Mr. McEnaney did not ask him what had happened. The employee claimed that Thomas Heath and his brother, John Heath, both saw the injured thumb at the time. He had returned to his work immediately, and worked the rest of the day. He went to see Dr. John Mangan the second night after the injury, who said it was a bad looking thumb. He burst it open again while lifting between Wednesday and Friday, and the doctor redressed it on Friday night, and told him not to work with it. The work on that job was finished on Friday. The doctor continued to treat the thumb until some time in October. He had offers of employment in October, but he was not able to work, on account of the condition of the thumb, until about October 30. He earned $4.80 a day in the employ of the city of Lynn.

Dr. John Mangan testified that when he saw the injured

thumb he found a very foul-smelling wound, with the nail hanging off; he was told that the thumb had been crushed between two stones. The wound did not heal very well; the covering of the bone had been injured, as well as the bone itself. He treated the employee twice a week for four or five weeks. He could not say whether he first came to him on the 3d or the 4th of September. It was a wound that had been received possibly within two or three days, and it was the doctor's opinion that he could not do the kind of work he had been doing with the injured thumb at that time. He had told the employee the latter end of October that he might go to work if he were careful and kept the thumb protected; he gave him a certificate to that effect.

Cornelius Murphy testified that he was working with Thomas Coyne, rolling a stone, when an injury occurred. Mr. Coyne had jumped back, saying he had caught his finger. Mr. Murphy saw it bleeding, and Mr. Coyne walked off, while he kept on working. He, Murphy, saw a rag on the finger a little while afterwards; there had been no rag on it before the accident. He had no recollection whatever as to when this injury occurred to Coyne.

Bernard McEnaney, the timekeeper, testified that he was working at Breed's Pond the latter part of August and the first part of September of last year. He did not recall that Mr. Coyne came to him during that time with an injured thumb. He was very positive that he had not torn up his handkerchief and tied up an injured finger. It is possible that Coyne may have been injured, but he knew nothing about it. Mr. Coyne was not working at Breed's Pond the first part of September, at the time he said he hurt his thumb. His time book showed that the employee started on that job on Aug. 17, 1914, and finished up on Aug. 28, 1914, at 12.30 P.M. If he had been working there on Sept. 1 or 2 it would be indicated in that book.

Thomas Heath, a foreman of the water department, testified that he was in charge of the work at Breed's Pond, and that he had no knowledge of any injury to Thomas Coyne while he was on the job until Coyne presented a claim. Mr. Coyne was "knocked off," with the rest of the stone masons, on Friday,

August 28, at 12.30 o'clock, because the job was finished, and he was not employed afterwards. He denied that the employee had ever showed him his thumb or said anything to him about any accident. He had instructions to report all accidents at the office, and he did not have occasion to report one about that time.

Auditor Tucker testified that, according to the original pay rolls, for the week ending Aug. 29, 1914, Thomas Coyne was paid $22.50 for four days and five and a half hours, which he received the following Saturday, September 5. He does not appear on the pay roll for the week ending September 5, which would indicate that he did not work after Aug. 29, 1914.

The evidence shows that the employee, Thomas Coyne, claimed to have received an injury to his right thumb some time about the 1st or 2d of September, 1914. He was very positive about the time. Dr. John Mangan testified that he saw the injured thumb within two or three days after the accident, and it was his opinion that the employee could not do the kind of work he had been doing with the thumb in the condition he found it at that time. The only corroborative evidence of the claim of the employee is the statement of Cornelius Murphy, who said he recalled that Coyne received an injury, but had no recollection whatever as to when it occurred. The employee claimed that he told Mr. McEnaney, the timekeeper, about the injury, and that both Thomas and John Heath saw the injured thumb; the timekeeper and Thomas Heath both deny that they saw the thumb or that the employee had brought the injury to their attention in any manner whatever. The time book of the city of Lynn, together with the auditor's records, show that the employee did not work for the city of Lynn after Aug. 29, 1914.

The committee of arbitration finds, upon this evidence, that the employee, Thomas Coyne, did not receive an injury arising out of and in the course of his employment with the city of Lynn, and his claim for compensation is, therefore, dismissed.

JOSEPH A. PARKS.
WILLIAM A. NEALEY.
HARRY T. TURNER.

CASE No. 1819.

GEORGE ARTHUR MILLIMAN, *Employee.*
GEORGE E. KEITH COMPANY, *Employer.*
NEW ENGLAND CASUALTY COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. WILLFUL MISCONDUCT. MACHINERY IN MOTION. EMPLOYEE WAS ENGAGED IN ADJUSTING A BELT. MOMENTUM OF SHAFT CAUSED PLIERS TO STRIKE HIM IN THE EYE. VISION DESTROYED. COMPENSATION AWARDED.

The employee was engaged in adjusting a belt on a moving shaft when the momentum of the shaft threw his hand up and caused the pliers to strike him in the right eye, destroying his vision. It was part of the employee's duty, as an operator of the machine upon which he was working, to keep the belts in order, and no instructions had been given that the machine should be stopped before performing such work. There was evidence to show that the foreman had seen operators of this machine making use of screwdrivers, hammers and other instruments, in order to throw the belt off the shaft, and that he had never issued any orders prohibiting this.

Held, that the injury arose out of the employment.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of George Arthur Milliman *v.* New England Casualty Company, this being case No. 1819 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Thomas F. Boyle of the Industrial Accident Board, chairman, E. E. Ryan, representing the employee, and Leo J. Dunn, representing the insurer, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, North Adams, Mass., on Friday, May 28, 1915, at 2.15 P.M.

Edwin K. McPeck appeared for the employee, and Robert B. Eaton appeared for the insurer, as counsel.

George Arthur Milliman, on March 24, 1915, was fixing a belt on his machine with a pair of pliers, when the pliers flew and struck him in the eye, as a result of which injury his eye was removed and a glass eye substituted.

The insurer contends that the injury to the employee was because of his serious and willful misconduct.

It is agreed that the period of disability resulting from this injury was seven weeks, and if he is entitled to recover, five weeks' total disability compensation is due. There will also be due specific compensation for fifty weeks for the loss of his right eye. His average weekly wage was $18.

George Arthur Milliman, the injured employee, testified: —

I have been employed by the George E. Keith Company for about two years, working on a rounding machine for about a year off and on, probably a week out of a month. A rounding machine cuts the shape of the outer sole. The machine is adjustable to any height. The shoe is held in the front. On March 24, 1915, between 9 and 9.30 A.M., I was removing the small round belt because it was slack. When the belt is slack the machine does not run so fast. It is our duty to take up the belts. I was using the pliers to throw the belt off. The machine travels at the rate of 400 to 500 revolutions a minute. The belt is about three-eighths inch, and is fastened together with a wire hook. The groove for the belt is about 1 inch. Henry Guyette taught me to run this machine. During the time he was giving me instructions he had to tighten the belt, and did it in the same way as I did. I do not exactly recall the instrument he used in removing the belt, but he removed it in the same manner as I did, and the machine was in motion when he removed the belt. There are four of these machines in the factory, and they are very close to each other. I have seen others remove the belt, and they do it in the same way. In tightening the belt the pliers were knocked out of my hand and flew and struck me in the eye. The pliers which hit me belonged to Adam Grosse. I found these pliers resting on my machine. Besides the pliers to throw off the belt, the men use a screwdriver, a hammer handle or anything that is convenient to them. There is a lever on the machine to stop it. It would not be easier to adjust the belt when the machine is stopped, because you would have to pull it off, and when the machine is in motion you just have to run it off. My belt was loose enough to be taken up. My instructor in the operation of the machine did not tell me anything about stopping the machine to adjust it. I do not know of any man who stops his machine to do this work.

Adam Grosse, an employee of the George E. Keith Company, called by the employee, testified: —

I have been employed by the George E. Keith Company for about three years, and work on a rounding machine. The pliers which are here belong to me, my initials are on them. I use these pliers in the factory when I have something to do on the belts, and also use them on the shoes. On the day of the accident we were waiting for something to do, and Mr. Milliman was at his bench, and all at once I saw him looking in the looking

glass, which is between his machine and mine. I asked him what the matter was, but he did not say anything, and then I saw his right eye hanging out. I found the pliers between my machine and Mr. Milliman's, on the floor. It has always been our duty to tighten the belts, and I have always done it. I generally stop the machine in order to be safe, but you can remove that belt while the machine is running, and I have done it. The groove on the machine where the belt is is about one-half inch or three-quarters inch. If the belt is loose you do not get the speed you ought to get. The speed of the machine is about 400 to 500 revolutions a minute. After Mr. Milliman was hurt we got instructions to have the master mechanic fix the machines. We always were supposed to fix it. The superintendent never told us not to fix it. There are not two men who work alike. I had never heard of any orders not to fix the belts. Since I have known Mr. Milliman he has been a nice young fellow, always attending to his work. I have never seen him under the influence of liquor. If you stopped the machine you would have to turn the machine around by hand in order to get the belt off, but by running the machine you just have to follow the belt to get it off.

Charles A. Williamson, superintendent of the George E. Keith Company at North Adams, called by the insurer, testified: —

Shortly after this accident occurred the foreman of the lasting room notified me that he had a man, badly hurt, in the emergency room. I did not have much talk with him in the emergency room, but I did afterwards, while we were waiting for the carriage. I do not remember the exact words. They were to the effect that he had grasped the belt with a pair of pliers, and I asked him why he did this, and he said he did not know; he guessed it had to be. He went to Dr. Wright's office first and then to the hospital. The operators of the machines are expected to fix these belts, which are about three-eighths inch round. That is simply a part of their work. There have been no instructions as to whether or not they should adjust them. The usual manner to adjust them is to stop the machine. The belts on these machines have to be fairly tight. After the accident I examined Mr. Milliman's machine and considered it tight enough, but of course some operators have different ideas. The work on the rounding machine is done by the piece. Some men want to run their belts tighter than others, and there is no objection to their doing this. The groove on the wheel is about one-half inch or three-quarters inch. It might be one-half inch above the belt, which is three-eighths inch. I could not ask for any better fellow than Mr. Milliman. It would be natural for Mr. Milliman to take the pliers and try to push the belt to one side. When the conversation took place after the accident, Mr. Milliman was in intense pain. In the operation of a rounding machine it requires a man of good judgment. The speed with which an operator works is a vital factor in the plant. A case of shoes would last Mr. Milliman about twenty minutes, and when he finished that case he would have to wait.

Herbert O. French, foreman at the George E. Keith Company, called by the insurer, testified: —

I first saw Mr. Milliman after the accident, after he had gone about 100 feet. He came up in back of me and I asked him what the matter was, and he pointed to his eye. I have never given instructions as to how they should adjust the belts. Some of the men take a screwdriver or a hammer handle and throw the belt off while the machine is in motion, and some stop the machine and throw off the belt by hand. I have seen them throw it off with their hand while in motion. No one else ever got hurt doing this to my knowledge. I should call Mr. Milliman about the average worker, apparently a bright, intelligent fellow. It was careless of him to do it, but not willful nor malicious. I never saw him intoxicated. He was in pain after the accident, and more or less nervous. He apparently had lots of sand. He said he was trying to pull the belt off. I looked at the machine afterwards, and would call it in perfect condition. Another operator went to work on it and did not find anything the matter with it. Different operators have different opinions on the tightening of belts. I never went to a man and told him not to adjust the belt. I never gave instructions as to whether they should or should not adjust the belts.

The evidence shows that George Arthur Milliman was employed by the George E. Keith Company, shoe manufacturers, at North Adams, Mass., running a rounding machine; that on March 24, 1915, while trying to adjust a belt with a pair of pliers, the momentum of the shaft threw his hand up and the pliers struck him in the eye; that because of said injury he lost his right eye; that at that time he was performing work which was required of him to do, that is, adjusting a belt, which was slack, in order to do more work; that the superintendent, Mr. Charles A. Williamson, admitted that the operators on these machines were never told that they should stop the machines to adjust these belts; that it was the work of the operators to keep these belts in order, and that it could be done by either stopping the machine or throwing the belt off while it was in motion; that the foreman, Mr. Herbert O. French, had seen operators of these machines using screwdrivers, pincers and other instruments in order to throw the belt off the shaft, and that he had never told the operators to stop this; and that no signs or notices were posted in the factory to this effect.

The committee of arbitration, upon all the evidence, finds that George Arthur Milliman received an injury arising out of and in the course of his employment, and that said injury was

not caused by his serious or willful misconduct; that he was performing his duty in trying to keep his machine in condition to do his work; that it was a part of his work to adjust these belts, and that it could be done by stopping the machine or throwing the belt while the machine was in motion; that he is entitled to medical and hospital services for the first two weeks after the injury, and, beginning on the fifteenth day, to total disability compensation at the rate of $10 a week for a period of five weeks; and that he is further entitled to compensation for the loss of one eye for a period of fifty weeks at the rate of $10 a week, as provided by section 11, Part II. (*b*) of the Workmen's Compensation Act.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

THOMAS F. BOYLE.
E. E. RYAN.
LEO J. DUNN.

CASE No. 1820.

JOHN CRANE, *Employee.*
WILEY & FOSS, *Employer.*
FRANKFORT GENERAL INSURANCE COMPANY, *Insurer.*
CHARLES S. BROUILLET, D.D.S., *Dentist.*

REASONABLENESS OF DENTIST'S BILL. FRACTURE OF THE AVEOLAR PROCESS.

The employee sustained a fracture of the aveolar process in the upper jaw by an injury in the course of his employment. The dentist fixed his price for the work which he did as a lump sum, submitting a bill for $50.

Held, that $29 is a reasonable charge.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Charles S. Brouillet, D.D.S., *v.* Frankfort General Insurance Company, this being

case No. 1820 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, Owen A. Hoban, representing the dentist, and James O. Porter, representing the insurer, heard the parties and their witnesses in the Selectmen's Room of the Town Hall, Gardner, Mass., on Monday, May 10, 1915, at 12 M.

H. R. Bygrave appeared as counsel for the insurer, and Austin E. Livingstone appeared for the dentist.

The question was as to the reasonableness of a dental bill for $50 submitted for attending an injured employee during the first two weeks following the injury. The entire material evidence was as follows: —

Dr. Charles S. Brouillet, the claimant, testified that the employee came to him on the date of his injury, Oct. 26, 1914. He had a fracture of the aveolar process in the upper jaw. The doctor set the fracture and wired the teeth to hold it in place. He treated Crane twice, later in the same day, twice on the 27th, twice on the 28th, twice on the 29th, twice on the 30th, twice on the 31st, once on November 1 and once on November 8. The treatment, after the setting of the fracture, consisted of washing the sockets of the teeth and applying counter irritants, antiseptics, etc., to prevent any septic process from setting up. He had fixed his price for the work as a lump sum, this being his customary method, and the custom of the dentists in the district. In fixing the price at $50 he had taken as a basis the character of the injury.

The committee of arbitration finds that a reasonable charge for the services performed, taking into consideration the fact that this was not an unusual case and required no special skill, is $15 for the setting of the fracture and $1 for each visit thereafter, — a total of $29, and fixes this amount as the sum due Dr. Brouillet from the Frankfort General Insurance Company for his services.

FRANK J. DONAHUE.
JAMES O. PORTER.
OWEN A. HOBAN.

CASE NO. 1831.

MANUEL K. SILVERIA, *Employee.*
BENNETT & DOUGLAS, *Employer.*
OCEAN ACCIDENT AND GUARANTEE CORPORATION, LTD., *Insurer.*

DURATION OF INCAPACITY. COMPOUND FRACTURE OF LEG. LONG DISABILITY.

The employee sustained a compound fracture of the leg on Oct. 18, 1913. Compensation for total disability was paid up to May 18, 1915. Evidence by insurer's physician was to the effect that employee has a permanent deformity of leg which totally incapacitates him for work, and that this deformity will continue unless corrected. He doubted the advisability of an operation.
***Held,* that compensation should continue.**

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Manuel K. Silveria *v.* Ocean Accident and Guarantee Corporation, Ltd., this being case No. 1831 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, Thomas A. Dolan, representing the insurer, and Edwin A. Douglass, representing the employee, heard the parties and their witnesses at the Hearing Hall, City Hall, New Bedford, Mass., on Tuesday, May 18, 1915, at 11 A.M.

Vincent C. Hoye appeared as counsel for the insurer.

The claimant, while employed as a stone mason on Oct. 18, 1913, was injured by a stone falling on his right leg and causing a compound fracture. Compensation at the rate of $8.19 has been paid from Nov. 1, 1913, to May 14, 1915, inclusive. The question was as to the continuance of incapacity.

Dr. P. H. O'Connor testified that he examined Silveria in behalf of the insurer on two different occasions, — Dec. 6, 1914, and March 1, 1915. His leg was in the same condition at the time of the second examination as at the first. There is a distinct backward bowing to the lower part of the right leg. This bowing is his greatest handicap at present. There is a

good union at the point of fracture. An X-ray which the doctor had taken showed that the fibula as well as the tibia had been fractured. This deformity of his leg will continue unless corrected. His leg, of course, will never be as good with a bend in it as if it were straight. Furthermore, he has lost a considerable amount of muscular tissue in the area of the break. Fractures of the tibia and fibula in this region have a tendency to backward bowing unless closely watched during treatment. As to the advisability of osteotomy to correct the deformity he could not say that the employee would be any better off if this should be performed. He might not get as good a union after the second break. At present he is totally incapacitated for his regular work. He would be able to perform light work after a while if he would throw his cane away, use the leg more and get more confidence in it. He cannot at present stand on the leg for a whole day.

The committee of arbitration finds that the employee still is totally incapacitated for work as a result of his injury, and is entitled to a continuance of his compensation at the same rate as heretofore from the date of the last payment until such time as total incapacity ceases.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

FRANK J. DONAHUE.
THOMAS A. DOLAN.
EDWIN A. DOUGLASS.

CASE No. 1845.

CHARLES F. BRINGMANN, *Employee.*
BOSTON BELTING COMPANY, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

ARISING OUT OF THE EMPLOYMENT. DISEASE. HERNIA. EMPLOYEE NOTICES SWELLING IN STOMACH. NO RECOLLECTION OF INJURY. INCAPACITY DUE TO CIRRHOTIC LIVER AND OTHER COMPLICATIONS. CLAIM DISMISSED.

The employee was required to lift heavy iron pipes in the performance of his work, and on Wednesday, March 31, 1915, noticed that his stomach was swollen and felt some pain. He had been ruptured about a year prior to this date, had trouble with his feet and ankles and had been afflicted with varicose veins for about two years. The record shows that if the employee wore a properly fitting truss his hernia would not disable him except for heavy lifting. His present disability is due to the condition of cirrhotic liver and other complications not related to his employment.

Held, that the employee is not entitled to compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Charles F. Bringmann *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1845 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, chairman, representing the Industrial Accident Board, Louis Kimpinsky, representing the employee, and David J. Maloney, representing the insurer, heard the parties and their witnesses in the Hearing Room, New Albion Building, Boston, Mass., on May 19, 1915, at 2 P.M.

Gay Gleason represented the insurer.

The question at issue was as to whether or not the present condition of the employee was due to a long-standing condition arising from natural causes rather than from any personal injury on April 1, 1915. The average weekly wages of the employee were $9.50.

Charles Bringmann, the injured employee, testified that he

worked on the suction hose for the Boston Belting Company, rolling the hose on carriages. He had to lift heavy iron pipes from 4 to 8 inches in diameter. On Wednesday, March 31, he noticed that his stomach was swollen, and he had some pain but was better the next morning. On April 1, about 4 o'clock the pain became worse, so that he told his foreman, and later he was sent to Dr. Winn, who is still treating him. He has not been able to work since, and while trying to do light work at home had to give it up on account of shortness of breath. He first noticed that he had a rupture about a year ago, and also had trouble with his feet and ankles, having varicose veins for about two years.

Dr. Charles H. Winn testified that he first examined the employee on April 2, 1915, and found that he had a navel rupture of a year's standing, which was reducible. The lower part of the abdomen was markedly swollen and the scrotum slightly swollen. The presence of fluid was revealed in the lower abdomen, which came from the condition of the liver, and it was possible for the fluid, when it amounted to a great deal, to force out the rupture a little. The employee thought that the swelling in the lower part of the abdomen was connected with the navel rupture, but it was not. The employee has a cirrhotic liver and a weak heart, being troubled with shortness of breath, and is being treated for this at present. If the employee wore a properly fitting truss he would not be disabled on account of the rupture, but could not do heavy lifting. He is disabled at present on account of the cirrhotic liver, with the accompanying fluid in the lower abdomen and the weak heart.

The committee of arbitration finds, upon all the evidence, that the employee, Charles F. Bringmann, did not receive a personal injury arising out of and in the course of his employment on April 1, 1915, and that the condition from which he is suffering is of long standing and due to natural causes, having no causal connection with a personal injury received in the course of and arising out of the employment.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the

facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

JOSEPH A. PARKS.
DAVID J. MALONEY.
LOUIS KIMPINSKY.

CASE No. 1863.

WILLIAM MCGINNIS, *Employee.*
KATHERINE A. DRISCOLL, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

ARISING OUT OF THE EMPLOYMENT. WILLFUL MISCONDUCT. INTOXICATION. BURDEN OF PROOF. INSURER ALLEGES THAT INJURY WAS DUE TO WILLFUL MISCONDUCT OF EMPLOYEE. EMPLOYEE INTOXICATED AT TIME OF INJURY. NOT IN CONDITION TO PERFORM HIS DUTIES AS TEAMSTER. BURDEN OF PROOF THAT INJURY OCCURRED, AS CLAIMED, NOT SUSTAINED BY EMPLOYEE. CLAIM DISMISSED.

The record shows that the employee had been drinking on the day of the alleged injury, and that he was intoxicated at the time of its occurrence. There is evidence from two witnesses that they had three bottles of whiskey with them during a part of the day. The employee and one of the witnesses were both in such a condition that, although they had taken the wrong road back from Peabody, neither of them knew whether it was the right or wrong road. A collision occurred with an automobile, as a result of the team being on the wrong side of the street. The employee claimed that he received an injury at the place where cinders were dumped, but said nothing at any time about this injury to his employers. About two months later, he advised his employers that he had received an injury by reason of the collision with the automobile.

Decision. — The Industrial Accident Board finds and decides that the employee was intoxicated at the time of the injury, and that he had not sustained the burden of proof that he received an injury as claimed.

Findings and Decision of the Industrial Accident Board on Rehearing.

The request for a rehearing having been granted, the Industrial Accident Board, having vacated the findings and decision of the committee of arbitration, heard the parties and their witnesses at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, Oct. 14, 1915, at 10 A.M., and on Thursday, Oct. 21, 1915, at 4 P.M., and find and decide as follows: —

Appearances: John L. Cogswell, for employee; John M. Morrison for insurer.

Questions at issue: Whether or not the employee received a personal injury arising out of and in the course of his employment; and if such injury was received, whether it was caused by reason of said employee's intoxication.

All the material evidence in the case is reported herewith.

The employee, William McGinnis, testified that he was a teamster and had worked as such for about ten years. He was working as a teamster for Mrs. Katherine A. Driscoll on March 4 and 5, J. J. McCarthy being his foreman. On March 4 he went to Mrs. Driscoll's and there saw McCarthy, who gave him orders. McGinnis told McCarthy that his horses ought to be shod, but McCarthy said to leave that until night as it was a bad team. The horses were fierce and ferocious and jumped around. They were between five and six years old. They were green horses, and McGinnis had known the team for about two months. McCarthy later told him to shoe the horses in Salem the next day. McCarthy instructed McGinnis to load up some cinders for the next morning over at Woodbury's shoe factory. McGinnis met McCarthy again the next day, March 5, at Salem, McCarthy stating that he wished McGinnis to wait for him until he had his coffee, and he would ride with him to the mills; that he, McCarthy, was going to collect some sand slips. McCarthy said he was going to telephone Mrs. Driscoll and tell her what he was doing, after which he came back and laid down in the boiler room, and told McGinnis not to go away without him. McGinnis put on a load of cinders and they rode home towards Salem by the way of Danvers, as they thought they might see some cinders during the drive. McCarthy was also looking for cinders during the drive that afternoon. In Salem they were driving down Washington Street, in the middle of the street, with the car tracks on the right, on which track there was an electric car going in the same direction as the team (toward Salem). At the same time a train came into the Salem depot; the horses became frightened, and jumped over toward an auto, striking the mudguard of the auto. McCarthy was on the team at this time, and afterwards made the statement that McGinnis was not to blame. They then drove around New Derby Street,

and McCarthy took a train for Beverly. After McCarthy left, McGinnis drove to the Naumkeag Mills, went to the office and got his ticket for the load, drove around the building to the dump, and pulled up on the pile of cinders and tried to dump his load. The horses started rearing and, when he got the top tailboard off, the horses went over the bank; there was a dredge working on the river and this had an effect upon the horses. He got on the team again and drove down and pulled around again over the pile; the horses jumped around, but he got the other tailboard off. The horses turned around toward the street, and he could not dump the load. He turned them around and headed them towards the stone wall and went to take the catch out, and they turned around towards him and he took hold of the nigh horse. He got the nigh horse with his right hand and kept on swinging, and the pole struck him in the side and knocked him down, and the off horse kicked him in the leg. He picked himself up and dumped the load; his right leg commenced to pain and tremble, and it was getting dark, so he thought best to be getting home. He left the dump about quarter to 6. The dump is about 2½ or 3 miles from the place where he puts his horses up at Beverly. It took him an hour to drive from the dump to Beverly. When he got to Beverly he drove into the yard; a fellow with a lamp, Mrs. Driscoll and her son were there. Mrs. Driscoll told him to get off her team and get right out of her yard; she told him it was a shame to spoil her beautiful horses with an accident. He tried to talk to her, but she told him to get off her premises. He said that there were six days' pay coming to him, and Mrs. Driscoll said if it was $50 he would not get a cent. He walked up to the driveway and walked for about half a mile when he met an Italian friend who gave him a taste of whiskey and a bottle of beer. He had difficulty in walking. When he reached home he sat down in the back kitchen of the boarding house and asked one of the men to take his shoe off. Mr. Horne took off his shoe, and asked McGinnis what had happened to him and he told Horne that he had been hurt. Horne went out to the light and his hands were covered with blood; he gave the shoe a shake and the blood was in the shoe. Horne helped McGinnis to bed and they sent for the doctor. McGinnis was

unable to work from that time on. He went to work on the 9th of June, but had to give it up on account of the swelling of his foot. He got a lighter job on a team and went to work a week afterwards. During all the time the foot was sore the physician, Dr. William Voss, attended him. His foot was not healed six weeks after the accident, and still pained him. He went to work permanently about the middle of June. At the present time if he walks or does any heavy lifting the foot aches and pains; it is getting stronger every day.

Upon cross-examination McGinnis testified that he was the regular driver of the horses in question. He was pretty fond of them. They would go about a mile in three-quarters of an hour, and he would have to put the whip on them to do that. He got back to the yard at quarter to 7 that night. Dr. Voss came to see him at quarter to 8. He would say that it was about an hour from the time he left Mrs. Driscoll's house to the time the doctor came. He did this same work before. Previous to this day it was later than 5.30 P.M. when he got back to the yard. On the day of the accident he was directed first to deliver the load of cinders that he had collected the night before. After he had the talk with Mrs. Driscoll the night before the accident he put on a load for the next morning. McCarthy was not discharged the Monday before the accident. McCarthy slept in the barn. McCarthy was in Mrs. Driscoll's kitchen with his coat off on the night of the accident. McCarthy was dressed up when he was with McGinnis on the day of the accident. He, McGinnis, had driven with McCarthy before when he was on business, collecting. When McGinnis was collecting sand McCarthy had never been with him before. He turned in his checks to Mrs. Driscoll or her son unless he met McCarthy, and then he would give them to McCarthy. He had met McCarthy, dressed up, prior to this time. He, McGinnis, had three drinks of whiskey that day. They had three bottles on the team, — one with about half a pint in it; one with a good drink in it; and the other was a pint. McCarthy came from a drug store; on a corner, in Salem. McGinnis knew that McCarthy had a pint of whiskey. McCarthy bought a pint of whiskey on Endicott Street in Salem. The auto accident was five minutes of 5. He, McGinnis, had some-

thing to drink after the accident, some whiskey. He and McCarthy had a fresh pint which had not been touched up to the time of the accident, and they started drinking that pint after the auto accident. When McCarthy left he took the pint with him. At the first hearing he, McGinnis, did not want to throw McCarthy down, he wanted to go light on him. The witness stated that he was the McGinnis that was fined $10 for drunkenness in the Salem court. The witness stated that he was discharged twice by Mrs. Driscoll for staying away on account of drunkenness. He would take time off and go away for a good time; he did that on an average of a month a year. No one saw the accident for which he is claiming compensation. Mrs. Driscoll told him to get off the team and told him that he should be ashamed to abuse her beautiful horses. He started to unhitch the team, but she would not let him; she told him to get off the premises. He asked her for his pay and she told him she would not give it to him. He was there about ten minutes. He meant to tell her about the accident when he finished his talk about his pay, but she slammed the door and would not listen to him. After he left there he went to an Italian's, who brought him down a drink of whiskey and a bottle of beer. The Italian knew he was hurt. He thought if he got a drink it would brace him up. Before the hearing in Beverly he went to Mrs. Driscoll's and talked with her. She never asked him how he got hurt. He told her about it that day; that was two or three weeks before the hearing. He did not tell her before because he was in bed.

Redirect examination: When McCarthy first offered a drink of liquor to him it was on Summer Street under a tree about quarter to 11. McCarthy was on the team with him, and they passed Edward Belanger with one of the other teams. McCarthy said, "Here comes Eddie. Hold up and we will give him a drink." McGinnis took the bottle three-quarters full and took a drink as large as a wine glass full, and passed the bottle to Eddie, and he had a drink; he passed it back to McCarthy, and McCarthy had a drink and put it back in his pocket. He, McGinnis, took the next drink about 3 in the afternoon, coming from Peabody. They had a pint bottle then. They were 2 or 2½ miles from where they had the auto accident

when they took the second drink. He took the third on New Derby Street after the accident. When McCarthy was aroused after being asleep in the boiler room he was under the influence of liquor, but he could take care of himself. He, McGinnis, had no more liquor after McCarthy left him. He is used to taking liquor; he has a drink every day. When he was drinking if he could not take care of himself he stayed away from work. He was afraid of the horses because they were a bad team. He would say he had taken altogether not quite one-half pint.

Edward Belanger testified that he was a teamster and had been for twelve or fourteen years. About March 4 or 5 he was employed by Mrs. Driscoll. He took orders from McCarthy and Mrs. Driscoll. Mr. McCarthy was supposed to be the foreman. He got orders from McCarthy on March 5. On March 5 he met McGinnis between quarter to 11 and quarter past. He had only dumped one load of cinders, and he gave McCarthy the check for that. He was coming from the depot, and McCarthy and McGinnis were coming out of another street. They stopped and pulled out a pint and gave him a drink. McCarthy and McGinnis had a drink. There was a little bit left in the bottle. It was a pint bottle a little more than half full. He met McCarthy again that day at Mrs. Driscoll's stable in Beverly. He met McCarthy in the barn the next morning. McCarthy gave him orders. He asked McCarthy about the accident. When he came home the night before Mrs. Driscoll called him, Belanger, into the house and tried to make him believe that he ran into an auto. McCarthy said it was not "Bill's" fault, it was the auto's fault. That pair of horses were green, full of life, and not a team you could leave and be sure they would be safe. They were a hard team to handle. Mrs. Driscoll gave the team to "Bill" because she thought he was about the best man. McGinnis would not come near the barn with liquor on. When he met McGinnis before they took the drink, McGinnis had no signs of liquor. He noticed the next morning something on the wagon and blanket that looked like blood. He was at the boarding house where McGinnis lives on March 5. He did not see him after he got home. "I had taken orders from McCarthy on March

5. I gave Mrs. Driscoll my other check, and when I told her that I gave McCarthy the first one, nothing was said."

Upon cross-examination Belanger testified that McCarthy came to the stable the morning of March 5 at quarter to 6 or so. He stayed at the boarding house. McCarthy was in his shirt sleeves at quarter to 6. Young Driscoll did not give the orders the day McGinnis was hurt. Young Driscoll gave him orders a couple of mornings afterwards, because McCarthy was not there. McCarthy was away a week. He remembers that particular morning because he asked McCarthy where "Bill" was going, and McCarthy told him that "Bill" was going to collect ashes all day.

Edward D. Horne testified that he was a painter. On March 5 of this year he was in the boarding house about 8 o'clock, the boarding house on Elliott Street, Beverly. About 7.45 he saw McGinnis come into the boarding house, and he asked him, Horne, to give him a lift off with his shoes. He went into the room. There was no lamp there. He picked up his left foot and took off his shoe, and he, McGinnis, told Horne to go easy on his right foot. He felt something run in the shoe, and he went into the kitchen and saw that his hands were covered with blood. He put McGinnis to bed. He was not intoxicated. He could smell liquor on his breath. He was able to take care of himself, but he acted very weak. He would say it was around three-quarters of an hour from the time the doctor was sent for to the time he arrived at the house.

Upon cross-examination he said: "I have told you all he told me at that time."

Redirect examination: He asked McGinnis how he got hurt and McGinnis told Horne that the horse stepped on his hip.

Dr. William Voss testified that he is a practicing physician and has an office in Beverly. On the night of March 5 he was called to attend McGinnis around 8.30 o'clock. McGinnis was on the bed and the bedclothes were saturated with blood. He found that there was a lacerated wound inside the right leg below the knee, 1 inch in length, a round, deep wound. He treated the wound, took two stitches in it, and dressed it. He inquired how the wound was caused, and McGinnis told him that the horse injured him. He was not intoxicated. He could

answer questions and knew everything that was going on. He lost considerable blood. The wound became infected and the doctor had to open it; it became badly swollen, and he treated him until May 15. At the time of the hearing he was not able to work, and for some little time afterward. He should have had a nurse because he could not get the attention that the injury required. Wound healed up slowly, by granulation. He complained of stiffness in the ankle joint, and the doctor treated that, which might have been caused by the accident. He has not looked at McGinnis' leg for quite a while. McGinnis requested that he notify Mrs. Driscoll and state that he was injured in her employ.

Upon cross-examination Dr. Voss testified that it is not true that the first question he, the doctor, asked when he was sent for was if McGinnis' employer was insured. He hesitated about going on this case at that time for the reason that he was already on his steps and had another appointment, but was informed that the man was bleeding to death, and it was stated that he was insured. He would have gone, anyway. There was the odor of liquor on McGinnis' breath. McGinnis told him that this injury was received while he was driving Mrs. Driscoll's team. McGinnis said he had evidence of the accident, — the foreman on the job and the blankets. He told Mrs. Driscoll that there was a fine of $50 for not reporting the accident. He told her if she was insured the cost of the case would not be charged against her.

Mrs. Jennie McDougall of 138 Elliott Street, Beverly, Mass., testified substantially: On March 5 she was living at the above address. She keeps a boarding and lodging house. She saw McGinnis on the night of March 5, after the doctor had seen him. She asked him how he felt and he said "weak." She telephoned to Mrs. Driscoll. She asked her, Mrs. Driscoll, if the team McGinnis was driving had got home all right, as McGinnis was hurt and she thought perhaps the horses had run away. Mrs. Driscoll did not seem to know about it.

Upon cross-examination Mrs. McDougall testified that she saw McGinnis on the bed and asked him how he was. She called Mrs. Driscoll before she saw McGinnis. She went to a drug store to telephone. They were getting McGinnis ready

for the doctor and she did not go upstairs. The doctor was coming in when she went to telephone. The only reason for her telephoning was to find out if the horses got home all right. The Driscoll stable is about half a mile from her house. McGinnis is still boarding with her. He was unable to work about three months.

Dr. William Voss testified that the nature of the injury was such as to require unusual attendance and care. This was a serious case which involved blood poisoning, a septic condition, change of dressings; one which really ought to involve hospital treatment and a trained nurse. The wound became septic, and it swelled up to large proportions from the knee to the ankle and toes. The stitches had to be taken out.

Upon cross-examination he testified that his bill for the first two weeks was $49. He did not send the employee to a hospital, where he would have better surroundings and receive the attendance of a trained nurse, because the employee would not go.

Mrs. Katherine A. Driscoll testified that she had been in the teaming business on her own account for two years; that her son is connected with her in business, acting as general supervisor; and that Mr. McCarthy is now working for her as foreman. McCarthy has been employed by her at various times, but on the 5th of March, the date of the accident to McGinnis, he was not in her employ. He became intoxicated the first of the week, . . . said he could get a better job, and left. The men were in the habit of staying on the premises at night, and on the evening of the accident McCarthy came back to the stable and she did not know it. He came back to work for her either the Thursday or Friday of the week following the accident. During the time that McCarthy was not in her employ she and her son had charge of the men. The last time she saw McGinnis before the automobile accident was the morning of the accident or the night before. The first she knew of the accident was when she received a telephone call from Salem, about 3.30 or 4 o'clock, that one of her teams had run into an automobile, and then she waited for the team to come in. She was very anxious. About 7.30 or 7.45, while walking up and down toward the stable, she heard a cart

coming at a very swift speed, and she, her son and Mr. Jardine met McGinnis halfway between the stable and Pleasant Street, which was 400 or 500 yards from the stable. It was a dark evening and they had two lanterns. She thought the men had been drinking and that made her more anxious. When her horses were stopped and McGinnis got down from the team he began to unhitch, but Mrs. Driscoll told him not to. She said, "You have been drinking. How dare you keep my beautiful horses out until this hour of the night." McGinnis mumbled a few words. She scolded him and was pretty cross. Going near the stable door McGinnis said he wanted what was coming to him, and she told him to come back when he was sober. She stated that he was with her eight or nine minutes during that time; that he had been drinking; and that he did not say anything about having been hurt. The first she heard about his having been hurt while on her team was when she got to the house and received a telephone call from Mrs. McDougall. Mrs. McDougall asked her if her horses were home safe, and then said that Mr. McGinnis was badly hurt and the doctor had to give him ether. The next afternoon Dr. Voss telephoned her. He asked her if she was going to report the accident to McGinnis. She said she knew of no accident. Dr. Voss called three times, and when she said she knew of no accident and would not report any, he said he would report it himself. Dr. Voss told her she would not have to pay for it. The insurance company would pay for it. The first time Mrs. Driscoll saw McGinnis after the accident was on the 28th of May, when he came to her house asking for the money that was coming to him, which he said was $10. Mrs. Driscoll told him there was no money coming to him. That money was part pay for the damage done to the automobile. Mr. McGinnis did not mention any accident while at the Naumkeag Mills. The only accident mentioned was the automobile accident.

Upon cross-examination Mrs. Driscoll testified that the man who telephoned told her that one of her teams ran into an automobile. He tried to get the man's name, but the man drove off. He said there were two men on the team, and that he felt that they had been drinking. From the description of the man and the direction of the team she thought it was

McGinnis that was driving, but it might have been Edward Belanger who was driving a team in that direction on the same day. When Belanger came to the house she asked him if he had had an accident. In her business Mrs. Driscoll takes tickets for the loads that have been delivered. The men come to the house and give them to her, to her foreman or to her son. She could not say who received the tickets on the day of the accident. The tickets were put on a spindle. When McGinnis came into the yard he threw down the reins and went to unharness, and she told him to take his hands off — not to touch her horses. She could tell he had been drinking from his looks and speech. Mrs. Driscoll stated that if she knew McGinnis had lost a quart of blood she might have changed her opinion — she would take care of him; but she had it in mind that he was drunk because he was reported drunk. She would not speak to him on the evening of the accident but told him to come around when he was sober. Mrs. Driscoll testified that McGinnis was a fine teamster when sober, but that his principal fault was that he would absent himself because of the use of liquor because he did not consider himself safe in handling the horses when he was drunk. McGinnis was never discharged because he was drunk on the job, but because he would go on a spree and stay away. She has known McGinnis for seven or eight years; he lived with her for a short time, and she saw him drunk on one Sunday. He loved horses and was a good teamster. She stated that Mrs. McDougall told her that McGinnis was so drunk that the doctor would not give him ether until the next morning, and that if Mrs. McDougall stated that she did not say anything about drunkenness she was mistaken. She stated that from the fifth of March to the time McCarthy came back to work for her he did not give her any tickets nor give her assistance of any kind. She saw McCarthy on her premises on the night of the 5th of March, and he was very much under the influence of liquor. He had come back for some things and was going off the premises. McGinnis came to see her before the last trial and said she knew he got hurt in the automobile accident and that she was cheating him out of his money. Mrs. Driscoll told him that he did not get hurt. She was told he was not dislodged from

the team. Mrs. Driscoll continued to pay McGinnis his wages and paid $15 for the damage to the automobile.

John J. McCarthy testified that he was now working for Mrs. Driscoll as foreman, but that he was not working for her on the day of the accident. He got through on the Monday before the accident and came back to work on Friday morning. He did not have any work from the time he quit work until the accident happened. He met McGinnis in Salem and rode around with him, but did not give him any orders because he was not working. He was dressed up; that is, not in his working clothes. He roomed at various places but could not remember where. He did not stay with Mrs. Driscoll. He met McGinnis about 8.45 in the morning and went down to see a man. McGinnis, Edward Belanger, Mat Howell and he drank a pint of whiskey. That was on Lafayette Street, Salem. Then when they were going to Peabody they got another pint on Endicott Street, near the Salem Depot, and they had a couple of small drinks apiece. It was gone when they left there. After the automobile accident they got another pint on Lafayette Street. Both he and McGinnis had some out of that pint, and there was about half of it left, and he put that underneath the corner of the blanket on the team. McGinnis then went to Peabody. There was nobody else on the team. McCarthy left McGinnis about 4.45 at the corner of Peabody and Lafayette streets, and he, McCarthy, went to Beverly. At that time they both had plenty of liquor. The Naumkeag Mills were about twenty minutes' ride from where McCarthy left McGinnis, and about forty minutes' ride from the mills to Mrs. Driscoll's. McCarthy stated that both he and McGinnis were on the seat at the time of the automobile accident, and that neither was hurt.

Upon cross-examination McCarthy testified that when he met McGinnis, Belanger and the other man he was on the road leading to the Naumkeag Mills, near Peabody Street, and that when he offered the pint of whiskey to the men it was full. Mat Howell, the other man referred to, was not in the employ of Mrs. Driscoll. McCarthy was on McGinnis' team when he invited Belanger to have a drink. Only one team was loaded, but he could not say which one. After the four drinks there

was none left in the pint. After that he drove on with McGinnis and they went to Peabody. He went to see Howell about some tickets. He did not come to collect any for Mrs. Driscoll, but simply to speak about them. They stopped in Endicott Street and got a pint of whiskey. McCarthy again stated that he met McGinnis going toward Naumkeag Mills about 9 o'clock and that his team was loaded, but after taking a drink he did not know which team was loaded. Sometimes the teams started out at 5 o'clock, and the number of loads delivered depended upon where the teams had to go. They were in Peabody about noon time. They did not go right to the Naumkeag Mills, but stopped at the harness makers. The Naumkeag Mills are about three-quarters of an hour from Peabody, and about the same time from Mrs. Driscoll's house. McCarthy left McGinnis at Peabody, and went to the engine room to go to sleep. He told McGinnis to wake him up. McCarthy offered the engineer a drink in his noon hour and the engineer took it. McGinnis woke him up, and he (McCarthy) had a bottle with some whiskey in it at the time. He had a half-pint besides the pint he had in his pocket. When McGinnis woke him up they got on the team and started back. McCarthy stated that neither he nor McGinnis knew which road they took back. He knew McGinnis did not know he was on the wrong road. He stated that the automobile accident happened about 4.30 or 4.45. He said the automobile ran into the end of the pole. He pulled the horses back and tried to stop a little, and the end of the pole hit the automobile. The off horse was nearest the automobile. He said McGinnis was able to handle the horses, but it was his fault that the accident happened because he was not on the right side of the street. It is the custom to drive on the tracks on that street. It is the easiest way. McCarthy bought another pint of whiskey in Salem, and they each had a good drink. They were going to Beverly. He said he was going down to the stable to get some things. He took the 5.05 train to Beverly from Salem Depot, but before going he bought a half pint of whiskey on the corner of Front Street. He bought three pints, had a half pint when he started and bought a half pint going off. McCarthy told Belanger that McGinnis ran into an automobile. It took them from about

1.45 to 5 o'clock to get to Salem Depot from Peabody. It was a couple of miles farther around the Danvers road than straight through. It was about 3 miles from Peabody to the Naumkeag Mills, and 5 miles the other way around. After the accident McCarthy did not meet McGinnis for a long time. The following Friday McCarthy went to work for Mrs. Driscoll. He did not have any tickets he had collected. McCarthy was with McGinnis and Belanger in Beverly, and went to see a man about a job on a building, but this was not for Mrs. Driscoll. He told the man a price on it, but the job was for anybody that he would work for.

Recalled, Mr. McCarthy stated that this team of horses was bought on the twenty-fourth day of November, 1914.

Alphonsus P. Driscoll testified that he was the son of Mrs. Katherine A. Driscoll, and that he took charge and looked out for things; that on the 4th or 5th of March McCarthy was not working for his mother, and that McGinnis knew it, because on that morning the load was on Rantoul Street, and he told McGinnis that he would have to hustle around and bring this team to Peabody. He told him McCarthy was gone, and that he was supposed to look out for things and assume a little authority. McCarthy got through work for his mother three or four days before, and he came back about a week or more after the accident. After he heard of the automobile accident he waited for the team to come in. The man who telephoned said it was a pair of gray horses, and when Belanger came in he asked him if he was driving gray horses, and Belanger said no. Belanger went to the house, and Driscoll's mother asked him if he got hurt in an accident, and he said no. Then they got anxious about McGinnis being out so late. He was not in at 6.30, and he was in the habit of getting in about 5.30; and then it was 7.30. He telephoned to the Salem police, and the captain said they had nobody there at that time. They waited until McGinnis came, — about 7.45 or a little later. They were in the doorway and could hear the horses quite a distance. McGinnis stopped the wagon and got down. His mother said, "William, you have been drinking," or something like that, and McGinnis said he had not. When he got down he was staggering. He had seen McGinnis drunk before. He said

McGinnis was with them about ten minutes and said nothing about being hurt. He walked down with his mother from the end of the dump to the barn. Driscoll was present when his mother received a telephone call from Mrs. McDougall, and his mother said, "Yes, I knew he was drunk when he was here." He had no doubt that McGinnis was drunk.

Upon cross-examination he testified that McGinnis got down on the right side of the team, and he was right side of him and started to unhitch the horses. His mother was holding one lantern and Jardine was holding the other. He noticed that McGinnis was staggering and mumbling away to himself, and that he could not unhitch the horses, so he (Driscoll) started to do so. He said he was not expecting McGinnis to be drunk, he expected him to be late. The only talking he heard was when his mother said, "How dare you keep my beautiful horses out until this hour of the night?" There were lots of things he did not hear. McGinnis might have asked for his wages. The man called up his mother and said he was standing still and McGinnis ran into him. He knew there had been a report of a driver being drunk; that there had been an automobile accident; that his mother was expected to pay the damages if there were any; and that the drunken condition of McGinnis caused this. He said that a man could be drunk at 4 o'clock and sober at 8 o'clock. McGinnis tried to help unhitch the horses, and his mother told him to keep his hands off. He did not hear his mother tell McGinnis to get off the premises. She told him he was not wanted. McGinnis did not walk along with him. He walked behind him. He was walking beside his mother. They might have been talking. He did not know. He said he saw McCarthy walking out with a dress suit case. McCarthy was supposed to have collected some tickets that day, but he did not give him any. One day McCarthy went to Boston with his mother to buy some horses. Driscoll testified that about five loads are hauled a day if they are hauled from Beverly. He did not consider it a good day's work for McGinnis the day of the accident, on account of his being loaded up the night before. He stated that McGinnis was a good teamster, and that he never was drunk on the job. It took very little to make him drunk, and when he takes a

drink he gets sick. He never heard him say he was in an automobile accident.

Rosalina K. Driscoll testified that she was the daughter of Mrs. Katherine A. Driscoll; that she remembered Mr. McGinnis coming to the house about three weeks before the hearing in Beverly; that her mother asked him into the sitting room, and he asked for the money that was due. Her mother said there was no money due. The money that was supposed to come to him was to be paid for the automobile damages. He said he was hurt when he ran into the automobile. Her mother then said that he was a pretty smart man to go down to the dump and dump his load of cinders and drive home. He did not say anything about getting hurt at the dump. He said it was in the automobile accident.

Upon cross-examination she testified that her mother said there was no money coming to McGinnis. That money was for the automobile. He said that is how he got hurt. Her mother did not know how much he was hurt. She did not say why he was a pretty smart man. She only said that he was a pretty smart man to go down to the dump and dump his load of cinders and drive home. He was in their front room about fifteen minutes. He said he got hurt when the automobile struck the pole of the wagon. He said he was going to get his wages, and her mother told him to go ahead and get them.

Several matters of importance stand out in the evidence which was presented to the Board at the rehearing. First of all, we have the statement of both McGinnis and McCarthy, who rode with him on the wagon during a part of the day, that they had three bottles of whiskey with them. McGinnis admits having but three drinks out of the bottles, which, McCarthy states, contained a pint of the liquid. The latter also stated that all of the whiskey was taken by him and McGinnis, with the exception of one drink each which was given to Mat Howell, Edward Belanger and the engineer in charge of the engine room where McCarthy remained for a time to have a sleep. McGinnis and McCarthy were both in such a condition that, although they had taken the wrong road back from Peabody, neither of them knew whether it was the right or wrong road; also a collision occurred with an automobile as a result of the

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John J. Goff *v.* Casualty Company of America, this being case No. 1872 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Bernard E. Carvin, representing the employee, and Herbert L. Barrett, representing the insurer, after being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board on Friday, May 21, 1915, at 2 P.M.

E. H. Hewitt of Peabody, Arnold, Batchelder & Luther appeared as counsel for insurer.

This employee on March 20, 1915, received an injury arising out of and in the course of his employment. He was working at the time at piling up lumber in a cellar, when he was struck on his head and back by a falling pipe about 20 feet long. The question in this case was whether or not the claimant at the time of receiving the injury on March 20 was in the employ of the Burditt & Williams Company, who was covered by insurance with the above-named insurer.

John J. Goff testified substantially as follows: His memory has failed him somewhat since his accident. He went to a place on High Street, Boston, and asked for work from a man who was giving orders, but he did not know his name. He was told there was work for him, and he reported the next morning. This conversation took place about 4 o'clock on Thursday. He started to work at 7 o'clock Friday morning. There were about fifty men working, but he could not say whether the same man that hired him was there too. A man by the name of Irwin put the other men to work, and he was told to work with the others piling lumber. He thought he had been working about half an hour when he got hurt; a pipe fell on him and knocked him down; he did not lose his senses completely. Two men picked him up and he rested for a few minutes, and then the foreman took him to the Relief Station. He remained there about fifteen minutes and then went to the Massa-

chusetts General Hospital. His head was examined at the hospital and liniment and oil applied to his back, as his left shoulder blade troubled him. They could find no place where the skin had broken on his head, although he felt pain. He remained at the hospital about an hour, and then came back to his former work. He felt dizzy and weak when he was leaving the hospital. The foreman advised him to go to work, and informed him that he usually paid $2.50 a day, and the employee agreed to this wage. He thought he was not able to work after he left the hospital because his head pained him and he found difficulty in walking; he told this to Mr. Irwin. He then went home and rested. He has performed little work since this time, but has earned a little something. He had been down to the Adams Express Company the morning of the hearing and worked at trucking. He went to the Massachusetts General Hospital again about seven days after his accident, or about March 29. His eyes were tested at the hospital. and he was sent to the Eye and Ear Infirmary. He had never had any trouble with his eyes before the accident and had never worn glasses.

Nathaniel L. Moore testified substantially as follows: That he was purchasing agent for Burditt & Williams Company, and was in their employ at the time of the fire; that he had charge of the building in taking out the goods that were salable, and had entire charge of the hiring of men; that he had not hired this employee and had never seen him before. He had not known of a man being injured from a steam pipe. He knew of a report of a man who injured his wrist. He thought there was some misunderstanding. He stated that a Mr. Robbins was doing contracting for the building, and he thought this employee was working for him and not for Burditt & Williams, as the latter employer was removing damaged goods at the time, as there had been a fire. The fire occurred on the 3d or 4th of March. He stated that Mr. Robbins was around all the time and employed about forty-three men. He knew of a man named Coyne who had injured his wrist, but did not know the names of the men when he hired them, as a general rule.

George C. Robbins testified substantially as follows: That he was a general contractor and was doing salvage work after the

fire; that he made a verbal agreement to do this work for Burditt & Williams and also for the Underwriters' Salvage Company. He remembered the employee coming to him to get employment, and he told him to come around the next day; he told him to go to work. The witness did not think he was insured at the time the employee was injured. His contract was with the Underwriters' Salvage Company. At the time of the accident the employee's time was charged up to the Underwriters. He was doing no salvage work for Burditt & Williams at this time.

Edwin Irwin testified substantially as follows: That the employee was working on the right-hand side of the building in the basement; that the Underwriters' Salvage Company was doing this work; that he went to the hospital with him, as the employee claimed he was unable to go unattended.

The committee finds that this employee was hired on March 19, 1914, by George C. Robbins, to work for him in assisting to remove materials and property damaged by a fire on Summer and High streets, Boston; that the above-named employer, Burditt & Williams Company, had employed a man on the same day to assist them, the said employers, to remove some damaged goods from their store which had been injured by the same fire, and through a mistake the claimant in this case filed his claim for injury against the insurer of said Burditt & Williams Company, the claimant believing that at the time of the injury he was working for Burditt & Williams Company, whereas, as a fact, the foreman who hired him was in the employ of George C. Robbins, a general contractor. The work in which the claimant Goff was assisting when he was injured was being done, under a contract which Robbins had made with the Underwriters' Salvage Company for salvage from the building and property from which value could be saved, and said work which was then being done was no part of any work which was being done for Burditt & Williams Company, or upon their premises, nor was it being done by Robbins for the said Burditt & Williams Company.

The committee, therefore, finds that the insurer is not liable to the claimant for compensation in these proceedings.

Counsel for insurer requested the following findings and rulings, a copy of which is set forth: —

Insurer's Request for Rulings and Findings.

First. — On all the evidence the employee is not entitled to further compensation.

Second. — Even if the insurer has paid compensation to the employee on account of an alleged injury, such payment is not an admission of any facts relative to the injury.

Third. — It does not appear that the injury for which compensation is claimed was sustained by the claimant while in the employ of the assured.

PEABODY, ARNOLD, BATCHELDER & LUTHER,
Attorneys for Insurer.

DAVID T. DICKINSON.
BERNARD E. CARVIN.
HERBERT L. BARRETT.

CASE No. 1873.

ANTONIO PREVETE, *Employee.*
F. M. DOYLE & CO., *Employer.*
ÆTNA LIFE INSURANCE COMPANY, *Insurer.*

ABILITY TO EARN. CHAIN OF CAUSATION. DISEASE. EMPLOYEE SUSTAINS COLLES' FRACTURE. COMPLICATIONS DUE TO DISEASE HAVING NO RELATION TO INJURY. CLAIM DISMISSED.

The record shows that the employee sustained a Colles' fracture while performing his work on Oct. 27, 1914. Later he was admitted to the Boston Psychopathic Hospital, where a diagnosis was made of delirium tremens. The mental state of the employee was considered suspicious. Compensation was paid to Feb. 22, 1915, and the medical evidence showed that he was not incapacitated on account of the injury after that date.

Held, that the employee was not entitled to further compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Antonio Prevete *v.* Ætna Life Insurance Company, this being case No. 1873 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, chairman, representing the Industrial Accident Board, Martin T. Joyce, representing the employee, and Asa S. Allen, representing the insurer, heard the parties and their witnesses in the Board Room, New Albion Building, Boston, Mass., on Tuesday, May 25, 1915, at 2 P.M.

William H. Vincent represented the insurer.

The question at issue in this case was as to whether the employee was still incapacitated as a result of a personal injury received by him on Oct. 26, 1914. Compensation had been paid to Feb. 22, 1915, on the basis of the average weekly wage of the employee, $11.

Antonio Prevete, the injured employee, testified that at the present time he felt pretty good, except for his wrist. He cannot push as well with his left hand as he could before the injury, although he can pull and move his fingers around all right. He worked for Mr. Doyle about three and one-half years, doing anything he was asked to do, and at the time of the injury was working on empty ale cases. His employment was steady, and he received $11 per week. Mr. Doyle's foreman asked him some time in March if he was coming back to work, and he told the foreman that he was not able to work.

Vesper Burton read the record of the Relief Station which showed that on Oct. 27, 1914, the employee was admitted, and the diagnosis showed a Colles' fracture of the left hand. Carl Turner from the Boston City Hospital read the record, which showed that on Feb. 13, 1915, the employee was admitted, and the diagnosis showed an old fractured scaphoid.

Daniel T. Mayo, a police officer of Division I., testified that about a year and one-half ago he took the employee out of a store on Commercial Street to the station house, and then the employee was sent to the Psychopathic Hospital. The employee seemed to think that the devil was after him. Daniel Dineen, another police officer, corroborated Mr. Mayo.

Dr. E. E. Southard of the Boston Psychopathic Hospital, and director of same, testified that the employee was first admitted to the hospital Jan. 26, 1914, and discharged Feb. 4, 1914. The diagnosis was made as delirium tremens, and was

also a little more sinister than ordinary cases of delirium tremens. The mental state of the employee was considered suspicious. On the 18th of February, 1915, the case was referred to the Boston Associated Charities, at which time the employee was reported as no better, that he gave his wife little money and that he ate and drank at saloons. With regard to the physical condition the doctor stated that the employee had a minor degree of heart disease, a bent back and a question of tuberculosis. The employee was, however, well developed and well nourished. The doctor had not seen the employee since the injury.

Dr. Wm. M. Walker, who examined the employee in a professional way once, testified that at the present time there is at least one bone in the wrist broken, which will never get well. The employee will never be able to push, and if he works at anything he will not be able to push although he can handle and pull. The doctor considered the employee permanently injured.

Dr. Harry Hartung, who examined the employee on the day of the hearing, testified that the employee had a fracture of the scaphoid and also of the styloid of the ulna. It was not a typical Colle's fracture, as it was a fracture of one of the small bones of the wrist. The anterior and posterior motions were pretty good, but there was a slight decrease in the amount of lateral motion. It was the doctor's opinion that the fracture of the scaphoid had united so that the employee had pretty good results from an injury of that nature. There was a certain amount of sensitiveness present, but he considered that the best thing would be for the employee to get to work again and use his wrist. There was no deformity or displacement of the fragments in this case. The doctor considered that from twelve to fourteen weeks was sufficient time to recover from a fracture of the scaphoid, as it took a little longer time than an ordinary Colle's fracture.

The committee of arbitration finds, upon all the evidence, that the employee, Antonio Prevete, is not now incapacitated for the performance of his work as a general helper in the employ of the subscriber, said incapacity for work having ceased on Feb. 22, 1915; the insurer having paid him compensation

to that date, no compensation is due under the Workmen's Compensation Act.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act.

JOSEPH A. PARKS.
ASA S. ALLEN.
MARTIN T. JOYCE.

CASE No. 1882.

FRANK ROSSA, *Employee.*
JOHN P. SQUIRE & CO., *Employer.*
SECURITY MUTUAL CASUALTY COMPANY, *Insurer.*

Arising out of Employment. Larking. Insurer not liable.

The employee, an eighteen-year-old boy, while attending to his master's work and minding his own business, was tripped up by another boy, in a spirit of mischief, and fell and broke his shin bone.

Held, that the accident did not arise out of the employment.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Frank Rossa *v.* Security Mutual Casualty Company, this being case No. 1882 on the files of the Industrial Accident Board, reports as follows:

The committee of arbitration, consisting of Frank J. Donahue of the Industrial Accident Board, chairman, Vittorio Orlandini, representing the employee, and Ralph W. Stearns, representing the insurer, heard the parties and their witnesses in the Aldermanic Chamber of the City Hall, Cambridge, Mass., on Tuesday, June 22, 1915, at 2 P.M.

Frank E. Zottoli appeared as counsel for the employee; the insurer was represented by P. B. Smith.

The employee, aged eighteen, was grasped and tripped up by another boy, aged nineteen, and fell, breaking the shin bone of his left leg. Both boys were employed in the sausage packing department of John P. Squire & Co., at Cambridge. The accident occurred on April 3, 1915. All disability had disappeared at the time of the hearing. Rossa's average weekly wages were $8.

The evidence showed that Rossa was going along minding his own and his employer's business, when Rautenburg, the boy who did the damage, came along, grabbed him by the lapels of his coat, butted his head against Rossa's chest, placed one leg behind Rossa's heels, and threw him to the ground. Rossa had worked there six months, and testified that he never had spoken to Rautenburg before. He said Rautenburg had been discharged in January for quarreling with other boys, but was hired back. Smaller boys he abused; with larger ones he had little fights. He had seen Rautenburg take a truck and run around the room with it, heading it towards other people's legs. He knew that he had fought with Francesco Di Renzo a few minutes before he had had the trouble with him.

Francesco Di Renzo testified that he had known Rautenburg three or four months. The latter was always fooling with his hands, slapping and punching people. He had never heard of the truck incident, and Rautenburg had had no trouble with him on the day he hurt Rossa. He saw Rautenburg fooling with Rossa on the day in question, but did not see him throw the younger fellow down. Rautenburg was "talking with his mouth and fooling with his hands, and was smiling and laughing." He never knew Rautenburg to be discharged for fooling. Salvatore Morse saw Rautenburg butt Rossa and throw him down. He picked Rossa up. Never knew Rautenburg to be discharged before.

Arthur F. Pratt, the time keeper, testified that Rautenburg first went to work in a temporary summer job for the company in 1912. On Dec. 12, 1912, he was hired in a permanent job and worked steadily up to the time both he and Rossa were discharged for the fooling incident. He would know if Rauten-

burg had been discharged at any time before, as he kept the cards which showed the hiring and getting through of the employees.

The committee of arbitration, much as they sympathize with the injured boy, cannot find that this reckless or wanton act of the other boy was one of the risks of the employment in which both were engaged. The case is one of a class, unfortunately quite large in number, which has been uniformly decided by the Industrial Accident Board to be outside the act. In McNicol's case (215 Mass. 497) the employee received his injuries at the hands of one in "an intoxicated frenzy and passion," who was known by the superintendent to be in the habit of getting in that condition, and when in it to be quarrelsome, dangerous and unsafe to work with, — an entirely different set of circumstances from those shown by the evidence in this case. The only case of this class decided in favor of the injured employee that has come to our notice is that of Hulley *v.* Moosbrugger (93 Atlantic, 79.) Reversed in the Court of Errors and Appeals, Nov. 15, 1915, Hulley *v.* Moosbrugger, 92 Atlantic, 1007. There, Judge Kalisch said:

> It appears that the prosecutor employed young men and boys. It is but natural to expect them to deport themselves as young men and boys, replete with the activities of life and health. For workmen of that age, or even of maturer years, to indulge in a moment's diversion from work, to joke with or play a prank upon a fellow workman, is a matter of common knowledge to every one who employs labor. At any rate, it cannot be said that the attack made upon the decedent was so disconnected from the decedent's employment as to take it out of the class of risks reasonably incident to the employment of labor.

This language is very interesting in view of the language used by Cozens-Hardy, M. R., in the very recent (1914) case of Clayton *v.* Hardwick Colliery Co., Ltd., where the Court of Appeal reversed a decision of the county judge in favor of the applicant, in an almost identical case. The Master of the Rolls said, "Wherever you find boys collected you must expect a certain amount of larking and horseplay, but it is a great step beyond that to say that where you find horseplay of that kind, or felonious or tortious acts, that is a risk incident to the employment." In this case there is no evidence that Rautenburg's

employers knew he was a boy. The Workmen's Compensation Act, in placing certain risks of industry as a burden upon the industry, never contemplated saddling industry with the burden of paying for such acts as these. They are something entirely apart from the employment, and the committee of arbitration must decide that this injury to Rossa was not one arising out of his employment; and he is not, therefore, entitled to compensation under the act.

FRANK J. DONAHUE.
VITTORIO ORLANDINI.
RALPH W. STEARNS.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, July 29, 1915, at 2.30 P.M., and affirms and adopts the findings and decision of the committee of arbitration.

No new evidence was presented at the hearing on review, the case being decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The evidence shows and the Board finds that the personal injury received by the employee, Frank Rossa, did not arise out of and in the course of his employment, and his claim for compensation, therefore, is dismissed.

FRANK J. DONAHUE.
DUDLEY M. HOLMAN.
THOMAS F. BOYLE.

CASE No. 1887.

FREDERICK W. CUSHMAN, *Employee.*
D. DOHERTY COMPANY, *Employer.*
FRANKFORT GENERAL INSURANCE COMPANY, *Insurer.*

ARISING OUT OF THE EMPLOYMENT. INTOXICATION. EMPLOYEE TURNS ANKLE WHILE DELIVERING COKE. ODOR OF ALCOHOL NOTICED BY WITNESSES. THIS IS NOT CONCLUSIVE OF INTOXICATION. CLAIM ALLOWED.

The employee was engaged in assisting and delivering baskets of coke at the time of the injury. He stepped on a stone or a piece of coke and turned his ankle. There was evidence that he had taken a glass of whiskey in the morning, before breakfast. A witness stated that she smelled a strong odor of alcohol from his breath. The insurer claimed that the injury resulted from intoxication.

Held, that the employee was entitled to compensation.

Review before the Industrial Accident Board.

Decision. — The Industrial Accident Board affirms and adopts the findings and decision of the committee of arbitration.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Frederick W. Cushman *v.* Frankfort General Insurance Company, this being case No. 1887 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Thomas F. Boyle of the Industrial Accident Board, chairman, Michael L. Fahey, representing the employee, and James O. Porter, representing the insurer, heard the parties and their witnesses at the Hearing Room of the Board, New Albion Building, Boston, Mass., on Wednesday, June 2, 1915, at 2.30 P.M.

Frederick W. McGowan appeared for the employee, and H. R. Bygrave appeared for the insurer, as counsel.

On March 8, 1915, while delivering coal, the employee turned on his ankle, breaking two bones.

The insurer contends that the employee was intoxicated at the time of the accident.

Frederick W. Cushman, the injured employee, testified as follows: —

On March 8 I was in the employ of D. Doherty Company, and have been in their employ nearly four years. On March 8, between 6 and 7 o'clock, I was delivering coal on Maywood Street. I left the yard between 4 and 5 o'clock, and went to Maywood Street with half a ton of coke. I took about half of it off the wagon from the ground and then I got into the team, as I could not reach it from the ground, and filled about two baskets, and in getting off the team I stepped on a piece of coke or a stone and came down on my ankle and broke two bones. On the way over to Maywood Street I delivered a half ton of coal on Dacia Street. After I had hurt my foot I put a basket of coke into the window, and on the way over I spilled the coke over the sidewalk. I could not stand on my foot. I tried to get back to the window with another basket, and did the same thing. Then I got back onto the team, drove it to the barn and took the harnesses off the horses. Two men were in the barn, one a teamster and the other man was under compensation at the time. I told them I thought I had broken my ankle, and that I could not walk to the house, so the two men helped me to the house. The next morning Dr. Kelley came to see me, and my foot was so swollen he could not tell whether it was broken or not, so he came again the next day, and said there were a couple of bones broken, and he sent me to the Boston City Hospital. They took an X-ray and found there were two bones broken. I stayed there five or six days, and they put my foot in a plaster of Paris cast. I had the cast on for ten weeks, and went back and forth to the out-patient department of the hospital. I have been away from work since the 8th of March, and am not able to work now, and will not be for quite a while. My wages were $14 a week, but I averaged about $15 with overtime. Overtime commenced at 5 o'clock, and perhaps every night I would work an hour or two over.

On cross-examination, testified: —

After dinner, I think it was about 2 o'clock, I hitched up my team and went down to Cutter's Wharf to get coal, and I shoveled on 3,400 or 3,500 shovels of soft coal. I took this coal to Keough's, unloaded it and shoveled it into the cellar, and then came back to the yard. I did not stop any place and I did not take a drink anywhere. When I came back to the yard young Mr. Doherty gave me an order for a half ton of coke, and told me to go to the Metropolitan yard across the way. When I got there they did not have it, so I had to go to the other yard and shovel it on the cart, and then I came back to the Metropolitan and then to the yard again. I did not have a drink when I went over to the Metropolitan. I got my order for a half ton of coal, and then drove down into the yard and loaded it on, got my slip and started for Dacia and Maywood streets. I did not have a drink during that day. It was getting dark when I delivered the coal at Maywood Street. I did not get a small boy to help me drive the team up the street. I met a lady at the door of the house on Maywood Street.

Ethel M. Bigelow testified: —

Some time between 6 and half past Mr. Cushman rang the bell and I went to the door. It was a C. O. D. order so I returned to the house to get the money to pay for it. There was also a charge for putting it in. I was very much frightened when I observed him because I always am afraid of intoxicated men. His breath was enough. He talked in bunches, I am sure he was intoxicated. I saw him when he left the steps, and he could hardly get to the team. There was a little boy on the team. He had asked him where the house was, and he could not get the horses up the street so the boy helped him.

On cross-examination, testified: —

Maywood Street is not very hilly, just a slight incline. I do not know whether he was not able to drive the horses or not able to stop the horses, when the boy helped him. It was the 8th of March, and it was getting along to dusk. He fumbled around before he found the list, and he gave it to me and he kind of hesitated and said there was a charge for putting it in, and I found it was impossible to make him understand; this is what I mean by talking in bunches. He understood enough about having to be paid for it, but when I talked to him about change he did not know, but I finally made it all right. He held the money in his hand, and I took out what was coming back to me. I certainly did smell an odor from him. I saw there was some more coke in the cart when he left. I was looking at him from the front window, and because of his condition was watching him. I do not know how much coke he put in. There was no one helping him. There was scattered on the ground about a basket or more. It took him a very short time to put in what he did. He had all he could do to carry the baskets. I never saw Mr. Cushman before. I was not watching him all the time, just at intervals. The team was about 12 or 15 feet from the window. He had to cross the sidewalk, then cross a very narrow lawn; the window was in the front. He shoveled part of the coke from the wagon standing on the ground, and later got into the cart to shovel.

Wilbur M. Bigelow, father of Ethel M. Bigelow, testified: —

When I came home on March 8 I found Mr. Cushman on my premises with some coke. He was leaning up against the cart, and I went inside the house and my daughter asked me what kind of a man was delivering the coke, and I asked her what was the trouble. As a consequence of the talk with my daughter I went out to this man. I stood on the top step of the porch, and he was leaning against the wheel on the off side. The ground was covered with coke, and I asked him what was the trouble. He said he hurt himself, and I told him, "I guess if you were not intoxicated you would not have been hurt." I asked about the coke there, and he said he could not put it in, and I told him he was to clean up before he went

away. He worked himself around on the other side of the wagon and got up, and I said, "What about this coke?" and he said, "I cannot put it in because it hurts me." I told him I would report him. He went away with pretty nearly half of it. I should say Mr. Cushman was intoxicated. I did not go down to the wagon, but I should say he was drunk from the way he talked. He talked kind of thick and not the way he did to-day.

On cross-examination testified: —

I am a conductor for the Boston Elevated. It was some time around half past 6 or twenty-five minutes of 7 when I got home. I was about 8 or 10 feet away from him when I spoke to him, and I did not get any odor from him. It was dark at this time, but there is a lamp-post at my house. The first conversation I had with him was when I asked him what about the coke on the ground. I asked him what was the trouble, and he said, "I have hurt myself." I have seen coke scattered about, but they clean it up. A man suffering pain might tip a basket over carrying it. The only evidence I had that he was intoxicated was the fact that he talked a little thick. Mr. Doherty returned about half the coke to me. I do not know just how much was returned, but could judge from what I saw in the cellar after it was put in. Cushman said he hurt his leg. I did not see him walk or stagger. My daughter told me he was drunk. In getting around the team he moved as though he had been hurt. I honestly think he was hurt. I did not see him delivering the coke. There is no question that he injured himself at that time. There was about a basket of coke on the sidewalk, and I asked him if he was not going to scrape it up, and he said he had fallen and hurt himself. At the time I did not notice that he had coke in the wagon. I did not see Doherty Company send the coke back, but I know it was there two or three nights afterwards.

Frederick W. Cushman, the injured employee, called in rebuttal, testified: —

I was not drunk. I had had no drinks in the afternoon. I had a drink of whiskey before my breakfast. That is the only liquor I had that day. I had no beer. I worked all that morning and all that afternoon. After I broke my ankle I could not deliver the rest of the coke, so I took it back. To the best of my knowledge there was about half of it in the team. I have been employed by Doherty Company for four years. I just got off the crutches last week. I have never been in court for drunkenness. I have never been arrested for drunkenness. I was not drinking the day before the accident, — it was Sunday.

The employer furnished the Board a statement of the wages earned by the employee for the twelve months preceding the date of his injury, which showed that the employee earned a

total of $675.64. During that time the employee lost four and five-sevenths weeks. The divisor, therefore, is 52 weeks less $4\frac{5}{7}$ weeks, or $47\frac{2}{7}$ weeks; $675.64 divided by $47\frac{2}{7}$ gives an average weekly wage, in accordance with the definition in the statute, of $14.29.

The evidence shows that Frederick W. Cushman was employed as a teamster for D. Doherty Company, coal dealers; that on March 8, 1915, while delivering a half ton of coke at 23 Maywood Street, Roxbury, he met with an accident by stepping on a stone or a piece of coke, while carrying baskets of coke to the cellar window and turned his ankle. He delivered as much coke as he could, when he found the pain from the injury was so great that he was obliged to discontinue his work, and drove back to the barn with part of the load of coke which he was unable to deliver. There was no evidence that he had drunk any liquor that day, except a glass of whiskey in the morning before breakfast. The only evidence of his being intoxicated was on the testimony of Miss Bigelow, who stated that she smelled a strong odor from his breath when he came to the door, and also that he made a mistake in changing money. Mr. Bigelow, her father, stated that at no time was he nearer than 8 or 10 feet from this man, and he did not see him walk. The only reason he gave for thinking Cushman was drunk was from his speech. He further stated that Cushman told him he met with an accident while delivering the coke, and he judged by Cushman's actions that he was hurt and in pain. He asked him why he did not clean up the scattered coke on the sidewalk, and he said he was unable to do so on account of his injury, He then saw him mount the team and drive away.

The committee of arbitration finds, upon all the evidence, that Frederick W. Cushman received an injury arising out of and in the course of his employment on March 8, 1915; that at the time of the injury he was not intoxicated, and therefore his injury was not caused by reason of intoxication; that his average weekly wages were $14.29; that he is entitled to medical and hospital services for the first two weeks after the injury, and, beginning on the 15th day, March 22, 1915, he is entitled to the payment of a weekly compensation based upon two-

thirds of his average weekly wages of $14.29, that is, $9.53, up to the present, June 2, 1915, — ten and two-seventh weeks at $9.53, amounting to $98.02, said weekly compensation to continue during his total incapacity for work, which is not now determinable.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

THOMAS F. BOYLE.
MICHAEL L. FAHEY.

James G. Porter dissents.

Findings and Decision of the Industrial Accident Board on Review.

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, New Albion Building, Boston, Mass., on Thursday, July 8, 1915, at 10 A.M., and affirms and adopts the findings and decisions of the committee of arbitration.

The insurer, through its attorney, requested an opportunity to present additional evidence, which request was denied. The case was decided by the Board upon the report filed by the committee of arbitration, said report containing all the material evidence pertaining thereto.

The weight of the evidence does not sustain the claim of the insurer that the employee, Frederick W. Cushman, received the personal injury of March 8, 1915, by reason of a condition of intoxication.

The Industrial Accident Board therefore finds, upon all the evidence, that the employee received a personal injury arising out of and in the course of his employment on March 8, 1915, said personal injury totally incapacitating him for work to June 2, 1915, the date of the hearing before the committee, said total incapacity for work continuing; and, in accordance with the decision of the committee, the Board finds that there is due

the employee to June 2, 1915, the sum of $98.02, and that weekly payments should be continued from said June 2, 1915, at the rate of $9.53 per week, until the incapacity status of the employee changes, subject to review under Part III., Section 12, and the general provisions of the act.

FRANK J. DONAHUE.
JOSEPH A. PARKS.
DAVID T. DICKINSON.
THOMAS F. BOYLE.

CASE No. 1910.

PATRICK HOPKINS, *Employee.*
ESTES MILLS, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

ARISING OUT OF THE EMPLOYMENT. NEW CAUSE INTERVENING. EMPLOYEE INCAPACITATED BY REASON OF KNEE INJURY. FALLS AND SUSTAINS OTHER INJURIES. CLAIMS THAT FALL WAS DUE TO FIRST INJURY. CLAIM DISMISSED.

The employee received an injury on June 30, 1913, by reason of which a condition of synovitis of the right knee developed and incapacitated him for work for a certain definite period of time. In December, 1914, while visiting at his brother's house, he fell downstairs and sustained certain injuries, including a second injury to the right knee. The record showed that on Sept. 13, 1914, all incapacity resulting from the original injury had ceased.

Held, that the employee was not entitled to compensation.

Report of Committee of Arbitration.

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Patrick Hopkins *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 1910 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman, representing the Industrial Accident Board, chairman, Henry F. Nickerson, representing the employee, and Harold E. Clarkin, representing the insurer, heard the parties and their witnesses in Room 35, City Hall, Fall River, Mass., on Wednesday, June 23, 1915, at 1.30 P.M.

Edward T. Murphy appeared as counsel for the employee, and Homer W. Hervey appeared for the insurer.

It was agreed that Patrick Hopkins was employed by the Estes Mills; that on June 30, 1913, while in their employ, he met with an accident; that his average weekly wages were $9.35. He was paid compensation from the date of the injury to March 26, 1914; then he worked for a time and became disabled again on April 13, 1914, and he was paid from that time to Sept. 13, 1914.

The employee stated, through his attorney, that he is still incapacitated for work, and has been ever since the injury.

Patrick Hopkins testified that he was injured in the Estes Mills about June 30, 1913. He went to the hospital after his injury and stayed there about two or three weeks. Then he went to the out-patient department, and Dr. Swift still treated his jaw. When he went the second time he told the doctor about his knee; it was bothering him. He was referred to Dr. McCarthy, who stripped him and examined his knee and told him he would have to go back to the house, which he did, and stayed there about a month. They gave him crutches, and he used them about seven or eight weeks. He has been going to the out-patient department of the Union Hospital as a patient for pretty nearly two years, and he is still going. He went to work in December at the Estes Mills, but not at his usual work. He was carried on as a fixer. He worked only four nights, and received $2.60 a night. His occupation before the injury was car-grinder. His leg drags going up steps, and it is worse coming down. It pains sometimes. When he stands long his ankle swells up. On December 24 he fell down a flight of stairs in his brother's house. He was laid up after that, and they sent for Dr. Trainor, who treated him during all that illness. He had no trouble with his knee after that fall. He was examined by Dr. Fuller about July 14, 1914, and he told him he would be all right in seven or eight weeks. At the time he signed the settlement receipt he expected to have a job at St. Patrick's School, but he did not get it. He tried to get another job, but could not find any with light work. He was looking for a job nightwatching, but he could not get it. He was warned at the hospital once to be more temperate in

his habits. When he fell downstairs at his brother's house he fractured some ribs and struck on his right shoulder and back, but he does not think he struck his right knee. The last time he reported at the hospital for anything before the accident in December was sometime in July or August (he agreed, through his attorney, that the date was July 28). He has had the pain in his back ever since the accident.

Dr. John N. Trainor testified that he had been the family physician for Mr. Hopkins and his family for some time. He examined him on April 26 last. He found some limitation of movement in the knee. He cannot voluntarily flex the knee the normal distance, and when he does flex it with his hand he cannot voluntarily extend it. He wears an arch supporter which was advised for him, and when he walks his heel seems to strike the ground sooner than it should; in other words, his heel seems to drag some on that side. He has a chronic inflammation of the lining of the right knee. There is a grating sound when he manipulates it. There is thickening of the synovial membranes and cartilages. There is chronic inflammation there. From what he found objective, it is probable that the subjective symptoms were true. After the accident of December 24 he treated the employee for fractured ribs. He does not remember treating him for any knee trouble at that time. He made an impartial examination of this man some time in January, likely, Jan. 14, 1914, and at that time he probably found a chronic inflammation of the synovial glands and membranes. When he tended him on Christmas Day he strapped his chest. He did not call to see him many times; he does not go to see a case of fractured ribs very often. Mr. Hopkins came to see him when he was able to be out. He has no recollection of anything being done to his knee at that time. He had two fractured ribs that the doctor knew of. In an ordinary case of fractured ribs he has known men to go to work in three or four weeks, and sometimes a man would work right through. There was nothing about this man, at the time he was called to him in December, that would make him think he had been drinking.

Dr. David H. Fuller testified that he is superintendent of three municipal hospitals. He made two examinations of Mr.

Hopkins at the request of the insurance company, one on July 14, 1914, and another on March 1, 1915. On the first examination the man complained of a pain in his right shoulder, pain in the small of the back along the lumbar region, pain in his right knee, and pain and swelling in his right ankle and foot. On examination the symptoms of his back were entirely subjective; in his right knee he had a synovitis which was very pronounced; his right ankle was swollen; the doctor told him he was not able to work at his trade, but that probably six or eight weeks would fix him up. He advised him to use the leg. At that examination he had been drinking, — no doubt about that. He was under the influence of liquor. His next examination was March 1, 1915. The man came to his office and complained of pain in his right shoulder. He told him that he had fallen down a flight of stairs. He claimed he fell on his right side, striking his right shoulder, right hip and right knee. On examination that time the doctor found that he had very much limitation of motion in his right shoulder. He had a bad traumatic pleurisy; he could not take a deep breath. The sixth and seventh ribs were fractured, but there was good union. The pleurisy was the result of the fall. He complained of numbness from his right shoulder to his elbow. His right knee, instead of a synovitis, presented a dislocated semilunar internal cartilage. He could not extend his leg fully. He found a funny condition in his right ankle, and thinks that that was caused from favoring the knee. His mouth condition was about the same. He showed absolutely no signs of liquor at this examination. From the history he gave him he felt that the condition of the knee was due to the fall downstairs. He had a bad back, and from the history he gave of falling downstairs he would think that was the cause of his back condition. The conditions he found on the second examination were sufficient to prevent him from working, especially his knee condition. At the time of his examination he found the cartilage partly cut, not wholly. He could distinctly feel and move the cartilage. The second condition of the knee could not grow out of the first. He does not know whether the synovitis had disappeared at the time of the second examination; an X-ray would determine that. A slight injury would throw a cartilage out. The

man gave a history of an injury, and the doctor attributes it to that. It can be caused by a thousand different things. A dislocation of the cartilage is painful, especially if it takes place traumatically. If the man told him he fell downstairs on December 24, as a result of the knee, the doctor would not believe him. He never noticed any dragging of the heel at that time.

Dr. Trainor, being recalled, testified that when he examined the man on April 26 he found no dislocation of a cartilage. He found synovitis at that time. This semilunar condition is the most painful of all injuries to the knee joint; it makes a person scream with pain.

We find, on the weight of the medical evidence and all the surrounding circumstances, that the employee, Patrick Hopkins, had fully recovered from his injury of June 30, 1913, on Sept. 13, 1914, and that there is no further compensation due him, the insurer having paid compensation to Sept. 13, 1914; that the injury of December 24 was in no way connected with his employment; and that he is not entitled to recover compensation for any incapacity growing out of such injury.

This decision and all findings regarding compensation, or the existence or termination of incapacity, are made subject to review and change by the Industrial Accident Board, if the facts warrant such action, in accordance with section 12, Part III. of the Workmen's Compensation Act and the general provisions of said act and its amendments.

DUDLEY M. HOLMAN.
HAROLD E. CLARKIN.
HENRY F. NICKERSON.

SUPREME JUDICIAL COURT DECISIONS.

CASE No. 1346.

MARY MCGRATH AND JOHN T. MCGRATH, ALLEGED DEPENDENTS OF JOHN F. KELLEY (DECEASED), *Employee.*
SIMPLEX PLAYER ACTION COMPANY, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

DEPENDENCY. INTERPRETATION OF STATUTE WITH REFERENCE THERETO. DEPENDENTS SHALL MEAN MEMBERS OF THE EMPLOYEE'S FAMILY OR NEXT OF KIN WHO WERE WHOLLY OR PARTIALLY DEPENDENT UPON THE EARNINGS OF THE EMPLOYEE FOR SUPPORT AT THE TIME OF THE INJURY. EMPLOYEE WAS A MEMBER OF THE FAMILY OF CLAIMANT, A HALF BROTHER, AND THE LATTER WAS PARTIALLY DEPENDENT UPON HIS WAGES FOR SUPPORT. EMPLOYEE'S FATHER SURVIVED, BUT WAS NOT DEPENDENT. WORDS "NEXT OF KIN" HELD TO BE REFERABLE ONLY TO THOSE WHO ARE NEAREST IN DEGREE OF CONSANGUINITY. HALF BROTHER NOT NEXT OF KIN. DECREE REVERSED AND CLAIM DISALLOWED.

The record shows that, because of the death of his mother and the intemperate habits of his father, the employee, a minor sixteen years of age when he was mortally injured, lived at the home of the claimant, his half brother, of whose family he was a member. The household affairs were managed by the wife of the claimant, to whom the latter and the decedent gave their entire weekly wages, and from this fund the household, consisting of the employee, his half brother, the latter's wife and their two minor children, was supported.

Held, that the claimant was not the employee's surviving "next of kin."

DECREE OF THE SUPREME JUDICIAL COURT ON APPEAL.[1]

BRALEY, J. By the findings of the Industrial Accident Board the insurer's first three requests for rulings become immaterial. (Pigeon's Case, 216 Mass. 51.) But even if Mary McGrath is not a dependent the insurer contends that there is no evidence

[1] For report of committee of arbitration and findings of Industrial Accident Board, see p. 26, Volume IV., Massachusetts Workmen's Compensation Cases.

which would justify a finding that John T. McGrath, the remaining claimant, was a dependent within the meaning of the statute. The facts shown by the record are that because of the death of his mother and the intemperate habits of his father, the employee, a minor sixteen years of age when he was mortally injured, lived at the home of the claimant, his half brother, of whose family he is expressly found to have been a member. The household affairs were managed by Mrs. McGrath to whom her husband and the decedent gave their entire weekly wages, and from this fund the household, consisting of the employee and the husband and wife with their two minor children, was supported. It follows that the employee was a member of the family of the claimant, who was partially dependent upon his wages for support. (St. 1911, c. 751, Part II., § 6; Dodge *v.* Boston & Providence Railroad, 154 Mass. 289, 290; Murphy's Case, 218 Mass. 278.) But as the employee's father survived, and section 2, Part V., of the statute provides that dependents shall mean members of the employee's family or next of kin who were wholly or partially dependent upon the earnings of the employee for support at the time of the injury, the question is whether the claimant comes within the second clause of the definition. The statute deals with the relation of employer and employee, and while no reference is made to our statutes of descent and distributions, the St. of 1887, c. 270, § 2, now Acts of 1909, c. 514, § 129, commonly known as the employers' liability act, also provides that where, through the employer's negligence, or those for whose negligence he was made liable, the employee was instantly killed or died without conscious suffering, "his widow or, if he leaves no widow, his next of kin, who, at the time of his death, were dependent upon his wages for support, shall have a right of action for damages against the employer." The Pub. Sts., c. 135 and c. 125, in force when the statute was first enacted contain the same provisions relating to the inheritance of personal property as the R. L., c. 140 and c. 133. And it was held in Daly *v.* New Jersey Steel & Iron Co., 155 Mass. 1, 5, where the deceased employee left as his only heirs a brother and sister, and in Welch *v.* New York, New Haven & Hartford Railroad, 176 Mass. 393, where the whole

heirs were his father and mother, that the sister and mother if actually dependent could recover, although the brother and husband would have shared equally if the question had arisen over the distribution of the intestate's personal property. A like construction of the present statute may be found in Herrick's Case, 217 Mass. 111, where the employee having left two daughters, one married and one single, the unmarried daughter, being wholly dependent, was awarded compensation accordingly. It is plain from not only these decisions but the wording of the statute that while dependency determines the right to compensation it is also necessary that the dependent should be in the same degree of kinship as the statutory heir or heirs. It is true that the object of the statute is to provide in place of the wages of the deceased employee the means of sustenance for his widow and other dependents. (Cripp's Case, 216 Mass. 586, 589.) And if dependents are to be ascertained solely from those nearest in blood it may happen that where a father and a mother survive who are not dependent a sister wholly dependent must be denied relief. Or if the employee leaves no widow but only children who are amply provided for by marriage, or otherwise are self-supporting, and an indigent mother wholly dependent upon him, the mother is not within the statute. But the words "next of kin" as used in our laws uniformly refer to those who are nearest in degree by consanguinity. (Swasey *v.* Jaques, 144 Mass. 135.) It must be assumed that this term as used in the statute was intended by the Legislature to have this well-recognized meaning, and we cannot construe "next of kin" as being the equivalent of dependent next of kindred, which would embrace all dependents without regard to degree. (Shelton *v.* Sears, 187 Mass. 455; Heidecamp *v.* Jersey City, Hoboken & Paterson Street Railway Co., 40 Vroom, 284; Chicago & Alton Railway Co. *v.* Shannon, 43 Ill. 338, 345, 346; Clarkson *v.* Hatton, 143 Mo. 47.) The claimant cites Caliendo's Case, 219 Mass. 498, where the mother and sister of the employee shared equally in the award, but the question whether they were in the same degree of kinship was not raised or considered. The decree must be reversed and the claim disallowed.

Ordered accordingly.

CASE No. 1367.

FLORENCE M. NEWMAN, WIDOW OF EDWIN C. NEWMAN, *Employee.*
STONE & WEBSTER ENGINEERING CORPORATION, *Employer.*
NEW ENGLAND CASUALTY COMPANY, *Insurer.*

LIVING APART FOR JUSTIFIABLE CAUSE. INTERPRETATION BY SUPREME JUDICIAL COURT. THESE WORDS HAVE ACQUIRED A PECULIAR AND APPROPRIATE MEANING IN THE LAW. ORDINARILY IT MUST APPEAR THAT LIVING APART IS DUE TO SOME FAILURE OF DUTY OR MISCONDUCT. LIVING APART BY MUTUAL CONSENT IS NOT JUSTIFIABLE CAUSE.

The record shows that the claimant, the widow of the employee, testified that she was married in 1904; that three children were born as a result of the marriage; and that several years prior to the death of her husband the children were taken away and placed in the care of a charitable association. Two of the children died, one being alive at this time. The claimant testified that at the time her children were taken away her husband was earning $11 a week, and that they were unable to live upon that sum; that she asked her husband for permission to go to work; that he went to Maine to accept employment; that before he left he told her to sell the furniture and to get money on an insurance book which he had; and that she sent him $10 out of the proceeds and kept the balance. Her husband sent her money at different times when she was not at work, and gave her money for clothes and paid the rent of her rooms. On two or three occasions they had occupied the same room. They had repeatedly talked about housekeeping and making a home for the surviving child, and she had been saving money for that purpose.

Held, That the finding of the Industrial Accident Board, that the claimant was living apart for justifiable cause, was not warranted; case remanded for further hearing.

DECREE OF THE SUPREME JUDICIAL COURT ON APPEAL.[1]

CROSBY, J. This is a proceeding under the Workmen's Compensation Act, by which the widow of Edwin C. Newman seeks compensation on the ground that she was wholly dependent upon her husband on Oct. 31, 1914, the date of his death. (St. 1911, c. 751, as amended by St. 1914, c. 708, § 3.)

The parties married in 1904. Three children were born as the result of the marriage. Several years ago the children were taken away from the parents and placed in the care of a charitable association where one of them, a boy, Richard Newman,

[1] For report of committee of arbitration and findings of Industrial Accident Board, see p. 62, Vol. IV., Massachusetts Workmen's Compensation cases.

twelve years of age, now is; the other two children have died.

The widow testified before the arbitration committee that at the time the children were taken away her husband was earning $11 a week, and that they were unable to live upon this sum; that she asked her husband for permission to go to work, "as he was not supporting her as she needed to be supported;" that he went to Maine to work; that before leaving he told her to sell the furniture and to get money on an insurance book which he had; that afterwards she sent him $10 out of what she realized from the furniture and insurance, and kept the rest. She also testified that he sent her money at different times when she was not at work, and that when she hired rooms he always paid the rent, and on several occasions gave or sent her money to buy clothes. She also testified that they occupied the same room on two or three occasions after they separated. She further testified that they had repeatedly talked about housekeeping and making a home for the boy, and she had been saving money for that purpose. When the furniture was sold and they began to live apart does not clearly appear from the record, but apparently it was several years before his death, as she testified that he was away working out of the State for four or five years.

The committee of arbitration found that the average weekly wages of the deceased were $21.60; that she "was wholly dependent upon her husband; that they lived together as man and wife; that he regularly sent her money for her support; that there was such an actual living together as brought her within the class of a wife who was living with her husband at the time of his death, and hence conclusively presumed to be wholly dependent." The committee further reported that if it should be held by the court that the facts found by it "did not constitute a living together within the meaning of the statute, then we find, if she was living apart from her husband, it was for a justifiable cause due to his failure properly to provide a suitable home for her and her children."

The findings of the Industrial Accident Board show that no additional evidence was presented at the hearing on review, and that the case was decided by the Board upon the report

filed by the committee of arbitration, "said report containing all the material evidence pertaining thereto." The Board does not sustain the finding of the committee that the claimant was living with her husband at the time of his death, but finds that at that time she was living apart from him for a justifiable cause "due to his failure to provide a suitable home for her and her children."

It is plain that the claimant was not living with her husband at the time of his death. This is settled by Nelson's Case, 217 Mass. 467. A careful examination of the evidence plainly shows that several years before the death of the husband he and his wife separated by mutual consent and agreement, and continued to live apart up to the time of his death. There is nothing to show that the deceased illtreated his wife or that there was any reason for their agreeing to live apart except that "he was not supporting her as she needed to be supported." He was earning $11 a week at the time of the separation, and it is not contended that his earnings were not used for the support of his family. In other words, so far as the evidence shows, he was discharging the duty which he owed to his family, and was not guilty of any misconduct towards its members aside from the fact that he was earning but $11 a week. There is nothing to show that he was able to earn any larger sum, although at the time of his death he was earning $21.60 a week.

The Workmen's Compensation Act as amended provides that "The findings of the board upon the question of such justifiable cause and desertion shall be final." (St. 1914, c. 708, § 3, cl. *a*.) It follows that if there was any evidence to warrant the finding of the Board it must stand. The correct determination of this question depends upon what is meant by the phrase "living apart for justifiable cause." These words have been interpreted by this court in numerous decisions. They have been construed in divorce proceedings brought by a wife against her husband for desertion, in petitions brought by her for separate support and maintenance, as well as in actions brought against the husband to recover for necessaries furnished to his wife. These words have acquired a peculiar and appropriate meaning in the law. We are therefore bound to construe them in accordance with such meaning. This is the rule of exposition

stated in R. L., c. 8, § 4, cl. 3. Where a woman lives apart from her husband and it is contended that such separation is for justifiable cause, ordinarily it must appear that such living apart is due to some failure of duty or misconduct on the part of the husband, but this classification does not exclude cases of living apart because of physical or mental infirmities of either or both husband and wife. If the wife lives apart from her husband by mutual consent she is not living apart from him for justifiable cause, and she is not entitled to a divorce upon the ground of desertion. (Lea *v.* Lea, 8 Allen, 418.) "A desertion consented to is not a desertion." (Ford *v.* Ford, 143 Mass. 577, 578.)

So in actions brought against a husband for support furnished his wife, if she is living apart from him for a justifiable cause or with his consent he is liable, but unless he consented to her living apart from him, and in the absence of misconduct on his part towards her, she is not justified in leaving her husband's house and demanding support on his credit elsewhere. In other words, she does not live apart from him for justifiable cause if there is no failure of marital duty on his part. (Mayhew *v.* Thayer, 8 Gray, 172; Sturbridge *v.* Franklin, 160 Mass. 149; Watts *v.* Watts, 160 Mass. 464.)

It has been held by this court that ill treatment or misconduct of a husband may be of such a character as to show that his wife is living apart from him for justifiable cause, although the cause might not be sufficient to entitle her to a divorce. (Lyster *v.* Lyster, 111 Mass. 327; Watts *v.* Watts, 160 Mass. 464, 468; R. L., c. 153, § 33.)

The case of Burlen *v.* Shannon, 16 Gray, 433, cited by the claimant, is not an authority in her favor. In that case the plaintiff brought an action to recover for board furnished to the defendant's wife, who was found to have been obliged to leave her home by reason of her husband's cruelty, and that she lived apart from him with his consent. As the law imposes upon a husband the obligation to support his wife, he is equally bound to pay for such support to whoever furnishes it while she lives away from him, whether such separation is caused by his ill treatment or by his consent or both. (Sturbridge *v.* Franklin, 160 Mass. 149; Mayhew *v.* Thayer, 8 Gray, 172.)

If we assume that when the deceased and his wife separated several years ago by mutual consent, and that such separation was justifiable at that time because he was not earning enough to support his family, it also appears that at the time of his death his earnings had nearly doubled, and she still continued to live away from him by mutual agreement. As the words in question have a well settled and fixed meaning in the law, and as it is our duty in interpreting them to give that meaning, it must be held upon the facts as disclosed by the evidence in this case that the wife of the deceased was not living apart from her husband for justifiable cause, and there was no evidence to warrant such a finding. In adopting the language used in the act, it is reasonable to infer that the Legislature intended that such language should be interpreted and understood as it had been previously and uniformly construed by this court, especially as there is nothing in the act to show a contrary intention.

The Industrial Accident Board should have determined as a fact whether the widow was dependent upon her husband at the time of his death, under the last paragraph of section 7, and should not have found that she was conclusively presumed to be wholly dependent under subsection *a* of section 7.

The case should be remanded to the Industrial Accident Board for further hearing.

Decree reversed.

CASE No. 1629.

ELIZA HUMPHREY, *Employee.*
HUMPHREY BROTHERS, *Employer.*
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

EMPLOYEE DEFINED. WHETHER WIFE COMES WITHIN DESIGNATION. DOCTRINE OF ESTOPPEL. CLAIMANT ACTED AS CASHIER AND BOOKKEEPER FOR HER HUSBAND. BUSINESS HAD BEEN CONDUCTED PREVIOUSLY AS A COPARTNERSHIP. MARRIED WOMAN CANNOT MAKE A VALID CONTRACT WITH A PARTNERSHIP OF WHICH HER HUSBAND IS A MEMBER. MANIFESTLY SHE IS NOT AN EMPLOYEE UNDER ACT. NO GROUND FOR APPLICATION OF DOCTRINE OF ESTOPPEL.

The record shows that a claimant, the wife of the subscriber, received a personal injury, within the plot of land occupied by the store in which the business was conducted, while going to her home. She performed services for him as bookkeeper and cashier, and received regularly wages for such services. Her service began at a time when her husband and his brother were copartners and continued after the former had acquired sole ownership of the business.

Held, that the claimant was not an employee under the act.

DECREE OF THE SUPREME JUDICIAL COURT ON APPEAL.[1]

RUGG, C.J. Eliza S. Humphrey acted as cashier and bookkeeper for her husband, who was conducting a store business. They lived together in a house near the store. She was injured within the plot of land occupied by the store while going to the home. She received regular wages from her husband who was a subscriber under the Workmen's Compensation Act. Her service began at a time when her husband and his brother, as copartners, were carrying on the business, but the husband subsequently acquired the interests of his brother, and she continued to work as before. The question is whether a wife can be an employee of her husband under the Workmen's Compensation Act. It is provided by St. 1911, c. 751, Part V., § 2, that "'Employee' shall include every person in the service of another under any contract of hire, express or implied, oral or written" with exceptions not here material. Plainly a wife working for her husband is not within the scope of this definition. Obviously one cannot be an employee without a contract. That is recognized by the words of the act. Employment presupposes a contractual relation. A married woman cannot make a contract, express or implied, with her husband. (R. L., c. 153, §§ 2 and 4; Woodward *v.* Spurr, 141 Mass. 283, 284; National Bank of Republic *v.* Delano, 185 Mass. 424.) A married woman cannot make a valid contract with a partnership of which her husband is a member. (Edwards *v.* Stevens, 3 Allen, 315; Fowle *v.* Torrey, 135 Mass. 87.) The circumstance that in the case at bar the wife began working for the partnership composed of her husband and his brother is immaterial, it is clear, also, aside from the definition, that the Workmen's Compensation Act does not purport to extend the obligations of the employer to persons who were not em-

[1] For report of committee of arbitration and findings of Industrial Accident Board, see p. 473, Vol. IV., Massachusetts Workmen's Compensation Act.

ployees at common law or outside the act (except in the unusual case provided for in Part III., § 17; see White *v.* Geo. A. Fuller Co., *ante*). It is a substitute for other common law and statutory remedies for those persons who rightly are included within the descriptive phrase of employees at common law. This is clear from the several sections of Part I. as to "Modification of Remedies." Manifestly a wife cannot be an employee of her husband outside the Workmen's Compensation Act. She cannot be an employee of her husband under the terms of that act.

There is no ground for the application of the doctrine of estoppel against the insurer. Estoppel can result only from words or conduct which have induced another to change his position to his harm, and which to a reasonable person ought to have seemed likely to produce that result. (Tyler *v.* Odd Fellows Mutual Relief Association, 145 Mass. 134, 138; Huntress *v.* Hanley, 195 Mass. 236, 241.) The record is utterly devoid of evidence upon which to base a finding of such conduct on the part of the insurer.

It becomes unnecessary to determine whether the wife sustained injuries arising out of and in the course of her work in aid of her husband. The decree must be reversed and a new decree be entered to the effect that there is no claim against the insurer.

So ordered.

CASE No. 1746.

CLARENCE E. LESUER, *Employee.*
CITY OF LOWELL, *Employer.*

"LABORERS, WORKMEN AND MECHANICS." PHRASE DEFINED. VOCATIONAL TEACHER NOT WITHIN MEANING OF PHRASE. TEACHER GAVE VERBAL INSTRUCTIONS AS TO THE PERFORMANCE OF THEIR WORK AND AT TIMES GAVE A PRACTICAL DEMONSTRATION. WORD "MECHANIC" CONNOTES A MANUAL OCCUPATION AS A PRINCIPAL MEANS OF LIVELIHOOD. CLAIM DISMISSED.

The decedent was a teacher employed at an annual salary in the automobile department of an industrial and vocational school. It was his duty to instruct the pupils in mechanics, English, arithmetic and civics. When an automobile was brought in for repair, the decedent gave verbal instructions as to the

performance of the work and at times gave a practical demonstration as to how it should be performed. If the work was incompleted at the hour of dismissal, it was within the discretion of the teacher to go on and complete it; and it was the custom of the decedent to ask some of the boys to remain and assist him. Lathes were used in repair work and it was the duty of the decedent to see that these machines were kept in order.

Held, that the decedent was a "mechanic" within the meaning of the act.

DECREE OF THE SUPREME JUDICIAL COURT ON APPEAL.[1]

PIERCE, J. The employee was a teacher employed at an annual salary in the automobile department of the Lowell Industrial and Vocational School, maintained by the city under St. 1911, c. 471. It was his duty to instruct boys in mechanics, English, arithmetic and civics. The method of teaching by an instructor in automobile repairing is described specifically in the bill of exceptions as follows: An automobile is brought in and the boys are given their directions in taking it apart and putting it together again. A teacher gives them oral instructions as to what to do; the boys do the work. He directs them. Occasionally, when the automobile is put together or taken apart he takes hold and gives them an idea how it is done; where it is possible he instructs in all kinds of automobile repairing, and at times gives a practical demonstration himself as to how the thing is done. The school hours were from 8.30 in the morning to 3.30 in the afternoon. The teachers were expected to stay after that time to get their records and prepare the work for the next day. If there was, at the hour of dismissal, an incompleted piece of work, it was within the discretion of the teacher to go on and complete it. In such instances it was the custom of the teacher to ask the boys if they would like to stay and do it, and some of the boys were so interested that they would stay round and help. To give boys practice in machine work, lathes were used in the repair work, and it was the duty of the teacher to see that these machines were kept in order.

The accident happened at 4.15 in the afternoon, and was the consequential result of some unknown act or omission of a boy while engaged in welding. This proceeding is brought by the father and the administratrix of the deceased employee, to re-

[1] For report of committee of arbitration and findings of Industrial Accident Board, see p. 614, Vol. IV., Massachusetts Workmen's Compensation Act.

cover the compensation provided by the Workmen's Compensation Act (St. 1911, c. 751, and amendments thereof), the defendant city having accepted St. 1913, c. 807, which provides that "laborers, workmen and mechanics" employed by it shall be within the protection of the Workmen's Compensation Act.

The only question now presented is whether the deceased was a laborer, workmen or mechanic, within the meaning of St. 1913, c. 807. Upon the facts the vocation of the employee was that of a teacher charged with the duty of imparting to his pupils, through precept and demonstration, knowledge of the use of various tools and machines and of the practical application of them, sufficient to fit the boys to be practical automobile repairers. The words of the statute as applied to cities manifestly are not intended to embrace all persons of whatever rank in the service of a municipality, but are used in a restrictive sense designed to distinguish certain well-known classes of servants from other classes. The word "mechanic" as used in the statute connotes a manual occupation, — a performance of mechanical labor, or work at one of many constructive trades, as a principal means of livelihood. It seems plain that the work performed by a professor or instructor in a polytechnical or occupational institute, in teaching or demonstrating the theoretical and practical use of mechanics as applied to the use of tools, appliances and machinery, is not that of a laborer, workman or mechanic, because the efficiency of the instructor depends in degree upon his skill in the use of tools. (Devney's Case, 223 Mass. 270; see White's case, *ante*.)

Decree affirmed.

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